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Situation of human rights in the Palestinian territories occupied since 1967

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, submitted in accordance with Human Rights Council resolution 5/1.

* A/67/150.

** This report is being submitted late in order to take account of significant information received from interlocutors in Israel and the occupied Palestinian territory. In this regard, the Special Rapporteur notes the Government of Israel's continuing practice of non-cooperation with his mandate, which impedes him from engaging directly with such interlocutors in the occupied Palestinian territory.

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Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

Summary

The present report addresses Israel's compliance with its obligations under international law in relation to its occupation of Palestinian territory. The Special Rapporteur focuses particular attention on the legal responsibility of business enterprises, corporations and non-State actors involved in activities relating to Israel's settlements in the occupied Palestinian territory.

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I. Introduction

1. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 reiterates his request to the Government of Israel to cooperate with his efforts to implement his mandate from the United Nations. Such cooperation is a fundamental legal obligation incident to membership in the Organization and ensures that the Special Rapporteur can constructively engage with the Government of Israel, victims, witnesses and civil society actors relevant to his mandate.

2. Article 104 of the Charter of the United Nations states that the Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes. Article 105, paragraph 2, specifies that those who represent the United Nations shall enjoy in the territory of States Members such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization. These provisions were elaborated in the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946. Article VI, section 22, thereof, entitled "Experts on missions for the United Nations", is particularly relevant, setting forth the duties of Members to cooperate with such representatives as Special Rapporteurs and to avoid interfering with their independence.

3. It should be noted that the Government of Israel has not cooperated with many other important initiatives of the General Assembly and the Human Rights Council relating to the occupied Palestinian territory. This includes the United Nations Fact-Finding Mission on the Gaza Conflict, the Committee of Independent Experts to follow up on the fact-finding mission on the Gaza conflict, the Independent International Fact-Finding Mission on the Incident of the Humanitarian Flotilla, the Beit Hanoun fact-finding mission, the Commission of Inquiry on Lebanon, and the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories. This pattern of non-cooperation with official undertakings of the General Assembly and the Human Rights Council should produce a concerted effort by Member States, the General Assembly, the Security Council and the Secretary-General to obtain the cooperation of the Government of Israel.

4. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 conducted research for this report on the basis of the foundational principle that business enterprises must respect international humanitarian law and should respect human rights. They should avoid infringing on the human rights of those living under occupation and address adverse human rights impacts with which they are involved.[1] The Special Rapporteur would welcome engagement with the Government of Israel, and companies and corporations operating within or in relation to Israeli settlements in the occupied Palestinian territory, regarding the issues raised in this report.

5. The Special Rapporteur calls attention to the grave circumstances of the Palestinian people, living under prolonged occupation and with no realistic prospect of its termination in the near future, and under these conditions the United Nations

[1] Guiding Principles on Business and Human Rights (A/HRC 17/31, annex).

has a great responsibility to do all that can be done to avoid the economic, political and cultural exploitation of the Palestinian people, as well as their endowment of natural resources.

II. Working methodology for the present report

6. Taking account of the Special Rapporteur's repeated unsuccessful requests to the Government of Israel to be allowed access to the occupied Palestinian territory, the present report is based on information requested and received from civil society actors, United Nations agencies, companies and corporations, non-State entities, and other stakeholders, in particular those with expertise concerning the involvement of business enterprises in the construction and maintenance of Israeli settlements. The Special Rapporteur highlights selected individual companies that operate, conduct business or otherwise profit from Israeli settlements located in the occupied Palestinian territory. The Special Rapporteur makes recommendations to seek to ensure that businesses operating in relation to Israeli settlements take prompt action to bring their activities into line with relevant international law and related rules and standards, including international human rights law. The Special Rapporteur notes that, since the preparation of the present report, he has brought its content to the attention of the businesses discussed herein. The Special Rapporteur is requesting clarification and further information regarding the allegations contained in this report, especially with a view to pursuing the prompt implementation of his recommendations.

III. General situation of settlements

7. From 1967 to 2010 Israel established an estimated 150 settlements in the West Bank. In addition, there are an estimated 100 "outposts", settlements built without official Israeli authorization but with the protection, infrastructural support and financial help of the Government of Israel. Such "outposts" are recently the subject of Government of Israel processes and discussions regarding their potential legalization under Israeli law. This is a serious escalation of the settlement agenda that is inconsistent with Israeli political rhetoric supporting negotiations to establish a viable, independent, contiguous and sovereign Palestinian State.

8. There are also 12 settlements in Jerusalem that were established, with Government funding and assistance, on land unlawfully annexed by Israel and made part of the city. Settlements control over 40 per cent of the West Bank, including critical agricultural and water resources. Many settlements are extensively developed, comprising large gated communities or small cities. Israel does not allow Palestinians to enter or use these lands, except those with permits to work.

9. The population of Israeli settlers in the occupied Palestinian territory is between 500,000 and 650,000. Approximately 200,000 of these settlers live in East Jerusalem. Statistics indicate that the settler population (excluding that of East Jerusalem) has, over the past decade, grown at an average yearly rate of 5.3 per cent, compared to 1.8 per cent in the Israeli population as whole. In the past 12 months this population increased by 15,579 persons. The Israeli Government offers settlers benefits and incentives relating to construction, housing, education, industry, agriculture and tourism, exclusive roads, and privileged access to Israel.

The effort Israel has expended in the settlement enterprise — financially, legally and bureaucratically — has turned many settlements into affluent enclaves for Israeli citizens within an area where Palestinians live under military rule and in conditions of widespread poverty.

10. This financial, legal and bureaucratic help in settlement areas is providing settlers with privileges they would not be afforded as Israeli citizens living in Israeli territory. Such privileges provide a telling juxtaposition to the large protests that occurred in Tel Aviv, Jerusalem and Haifa in 2011, involving hundreds of thousands of Israelis who freely assembled to demand social justice, lower living costs and a Government response to the economic distress that Israeli middle classes are experiencing.

11. The establishment of the settlements is a flagrant violation of international humanitarian law as set forth in the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) and the Regulations annexed to the Hague Convention IV of 1907. Article 49 of the Fourth Geneva Convention prohibits an Occupying Power from transferring citizens from its own territory to the occupied territory. The Hague Regulations prohibit an Occupying Power from undertaking permanent changes in the occupied area unless justified by military needs in the narrow sense of the term, or unless they are undertaken for the benefit of the local population.

12. In building settlements and associated infrastructure, Israel further violates international law through the appropriation of Palestinian property not justified by military necessity, and by imposing severe movement restrictions on Palestinians. Such restrictions violate those human rights dependent on freedom of movement, including rights to health, education, family life, work and worship. In addition, the scale of Israel's settlement project and the massive financial investment in it appear to confirm Israel's intention to retain control over these areas, thus violating a core principle of the Charter of the United Nations, namely Article 2 (4), which prohibits the acquisition of territory by the use or threat of force. Moreover, the settlements fragment the West Bank, including East Jerusalem, into isolated geographical units, severely limiting the possibility of a contiguous territory and the ability to dispose freely of natural resources, both of which are required for the meaningful exercise of the fundamental and inalienable right of the Palestinian people to self-determination.

13. Israel has created a regime of separation and discrimination, with two separate systems of law in Palestinian territory: one system applies to the settlers, and treats the settlements as de facto extensions of Israel and grants settlers the rights of citizens with the protections of a quasi-democratic State. In contrast, the Palestinians are subject to a system of military administration that deprives them of legal protection and the right to participate in shaping policies regarding the land in which they live. These separate systems reinforce a regime in which rights depend on national identity and citizenship. A dual system of roads, one for settlers and one for Palestinians, further entrenches the discriminatory separation between the two communities.

14. The wall in the West Bank is one of the most prominent aspects of the settlement enterprise. Much of the route of the wall is placed inside the West Bank, and takes into account the further expansionist designs of settler communities. Access restrictions to Palestinian farmland in the vicinity of Israeli settlements

located on the eastern side of the wall are widespread. While in some cases the restricted areas are unilaterally established and enforced by the settlers, in other cases the Israeli military erects fences around settlements and declares the area a "Special Security Area". In its near unanimous (14 to 1) advisory opinion of 2004, the International Court of Justice unequivocally declared that the separation wall violated international law, should be dismantled and Palestinians compensated for harm experienced.

15. In Area C, comprising 60 per cent of the West Bank, the zoning regime applied by Israel further benefits the establishment and growth of settlements, while denying the development of Palestinian communities. The zoning regime effectively prohibits Palestinian construction in some 70 per cent of Area C, or approximately 44 per cent of the West Bank. In the remaining 30 per cent a range of restrictions makes it virtually impossible for Palestinians to obtain a building permit. In practice, Israeli authorities allow Palestinian construction only within the boundaries of an Israeli-approved plan, which covers less than 1 per cent of Area C. As a result, Palestinians are left with no choice but to build "illegally", which leads to inhumane Israeli responses involving demolition and displacement.

16. Since East Jerusalem was purportedly annexed by Israel, the Government of Israel has created demographic and geographic conditions designed to thwart peace proposals designating Jerusalem as the capital of Palestine. Israel has sought to increase the Israeli population and reduce the number of Palestinians in the city. Israel has employed the following methods: physically isolating East Jerusalem from the rest of the West Bank in part by building the wall; discriminating in land expropriation, planning and building, and demolition of houses; revoking residency and social benefits of Palestinians; and inequitably disbursing the municipal budget between the two parts of the city. The forced eviction of Palestinians from their homes by settlers backed by the Government has contributed to changing the demography of the city. Palestinians have lost their homes and many more remain at constant risk of forced eviction, dispossession and displacement. The Government supports the settlers' actions by, inter alia, allocating private security guards; sending security forces to accompany the takeover of Palestinian homes; and funding Israeli development projects in the Jerusalem settlements.

IV. Legal framework

A. General: human rights law and international humanitarian law

17. Israel is a State party to most core international human rights conventions, and reports regularly to the relevant human rights treaty bodies.[2] A situation of armed conflict or occupation does not release a State from its human rights obligations. The International Court of Justice, human rights treaty bodies, successive United Nations High Commissioners for Human Rights and special procedures of the Commission on Human Rights and its successor, the Human Rights Council, have consistently confirmed that international human rights law and international humanitarian law apply concurrently throughout the occupied Palestinian territory.

[2] http://tb.ohchr.org/default.aspx?country=il.

18. Israel is bound by international humanitarian law found in the treaties it has ratified, as well as in customary international law. Notably, in the occupied Palestinian territory Israel is bound by the provisions of international law specific to occupied territories. The rules of international humanitarian law regarding military occupation, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)[3] and the Regulations annexed to the Hague Convention respecting the Laws and Customs of War on Land of 1907,[4] must be applied by Israel, as the Occupying Power, in the West Bank, including East Jerusalem, and the Gaza Strip. Although Israel has argued against the formal application of the Geneva Convention, and agreed only to apply the "humanitarian" provisions as determined by itself, the situation remains one of belligerent military occupation, as recognized by the Security Council, the General Assembly and the Human Rights Council and most conclusively by the International Court of Justice in its 2004 advisory opinion on the wall. In addition to the applicability of the Fourth Geneva Convention, the Hague Regulations, which are accepted as customary international law, apply.[5]

19. The Government of Israel, as the Occupying Power, is duty-bound to respect and implement human rights and international humanitarian law obligations in the occupied Palestinian territory. Israel also has an obligation to ensure that private businesses operating in the occupied Palestinian territory are held accountable for any activities that have an adverse impact on the human rights of the Palestinian people.

B. Human rights and international humanitarian law obligations and principles relevant to private corporations in the occupied Palestinian territory

1. Guiding Principles on Business and Human Rights

20. On 16 June 2011 the Human Rights Council in its resolution 17/4 unanimously endorsed the Guiding Principles on Business and Human Rights[6] for implementing the United Nations "Protect, Respect and Remedy" Framework, providing — for the first time — a global standard for upholding human rights in relation to business activity. The Guiding Principles were prepared by the former Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises, Professor John Ruggie. They provide authoritative normative guidance, clarifying the roles and responsibilities of business enterprises with regard to human rights, and the necessary legal and policy measures to be taken by States arising from their existing human rights obligations to ensure respect for human rights. It is the first normative document on business and human rights to be endorsed by an intergovernmental human rights body.

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[3] United Nations, *Treaty Series*, vol. 75, No. 973.

[4] Regulations concerning the Laws and Customs of War on Land, adopted on 18 October 1907; entered into force on 26 January 1910. See Carnegie Endowment for International Peace, *The Hague Conventions and Declarations of 1899 and 1907* (New York, Oxford University Press, 1915).

[5] See A/HRC/12/37.

[6] A/HRC/17/31, annex.

21. The Guiding Principles highlight the steps States should take to foster respect for human rights by businesses. They provide a framework in which companies should demonstrate that they respect human rights and reduce the risk of abuses. They also constitute a set of benchmarks by which to assess business respect for human rights. The Guiding Principles are organized under the Framework's three pillars:

(a) The State duty to protect against human rights abuses by third parties, including business enterprises, through policies, regulation and adjudication;

(b) The corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing on the rights of others and to address the adverse impacts with which they are involved;

(c) The need for greater access to remedy for victims of business-related abuse, both judicial and non-judicial.

22. The Guiding Principles provide concrete and practical recommendations to implement the Framework. The Guiding Principles do not create new international law obligations, but constitute a clarification and elaboration of the implications of existing standards, including under international human rights law, and practices, for both States and business enterprises, integrating them within a coherent framework.[7] In addition to forming part of States' existing international human rights obligations, important elements of the Guiding Principles are also increasingly reflected in national laws, and in global, regional and industry-specific soft law standards and initiatives as well as contractual obligations.

23. Companies can have an impact on all human rights depending on the situation and context of their activities; therefore it is essential that they put in place an effective ongoing human rights due diligence process to assess risks and the potential and actual impact of their activities on human rights, integrate and act on the findings of such assessments, track the effectiveness of their response and communicate on both the assessments and the response. This is in addition to business enterprises expressing a clear public commitment to meeting their responsibility to respect human rights, and to providing for or cooperating with the remediation of any adverse effects that they have caused or contributed to.

24. Human rights may be at heightened risk and should therefore receive greater attention in particular industries and contexts, including humanitarian situations, but businesses should in all cases be encouraged to have a periodic review to assess all human rights affected by their activity. International human rights standards, including the International Bill of Human Rights[8] and the eight core conventions of the International Labour Organization (ILO), as set out in the ILO Declaration on Fundamental Principles and Rights at Work all act as an authoritative list against which to assess the human rights impacts of business enterprises. Impact assessments should also consider, depending on circumstances, additional standards, for instance, relating to the rights of indigenous peoples; women; national or ethnic, religious and linguistic minorities: children; persons with disabilities; and migrant workers and their families, wherever appropriate. Business enterprises should respect the standards of international humanitarian law whenever they operate in a situation of armed conflict. States should exercise even greater oversight with regard to businesses enterprises that they own or control.

[7] A/HRC/17/31, para. 14.

[8] The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

25. The Guiding Principles are leading to a convergence of global standards and initiatives on business and human rights, as evidenced in reports of the Working Group on the issue of human rights and transnational corporations and other business enterprises and the former Special Representative of the Secretary-General.[9] Examples of regional initiatives include: (a) the International Organization for Standardization (ISO) has included a chapter on human rights in its guidance on corporate responsibility, which is aligned with the United Nations "Protect, Respect and Remedy" Framework on which the Guiding Principles are based; (b) the European Commission has issued a communication on corporate social responsibility expressing its expectation that all enterprises should meet human rights responsibility as defined in the Guiding Principles.[10] It has also stated its intention to publish periodic progress reports on the implementation of the Guiding Principles within the European Union and invited European Union member States to develop national plans for the implementation of the Guiding Principles by the end of 2012;[11] (c) the Association of Southeast Asian Nations (ASEAN) has announced that the first thematic study by the new Intergovernmental Commission on Human Rights would focus on business and human rights in a manner that is fully compliant with the Guiding Principles;[12] and (d) the Guidelines for Multinational Enterprises of the Organization for Economic Development and Cooperation (OECD), as updated in 2011, are now fully aligned with the corporate responsibility to respect human rights as set out in the Guiding Principles.

2. The Global Compact

26. The Global Compact[13] is the leading global voluntary initiative for corporate social responsibility that also addresses the issue of business and human rights. It was launched at the initiative of the Secretary-General in 2000, aimed at persuading business leaders to voluntarily promote and apply within their corporate domains 10 principles relating to human rights, labour standards, the environment and anti-corruption. Seven United Nations bodies work in a continuing partnership with the Secretary-General's Global Compact Office, namely, the Office of the United Nations High Commissioner for Human Rights, the United Nations Office on Drugs and Crime, the United Nations Development Programme, the United Nations Environment Programme, UN-Women, the International Labour Organization and the United Nations Industrial Development Organization. The Global Compact has stated that the Guiding Principles on Business and Human Rights provide the content of the first principle of the Global Compact and thus form part of the

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[9] Uptake of the United Nations framework and the Guiding Principles has been documented by the Working Group in its first reports to the Human Rights Council (A/HRC/20/29) and the General Assembly (A/67/285), by the Secretary-General in his report to the Human Rights Council (A/HRC/21/21 and Corr.1) and by the former Special Representative of the Secretary-General; see www.business-humanrights.org/media/documents/applications-of-framework-jun-2011.pdf.

[10] Available from http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index_en.htm.

[11] http://ec.europa.eu/enterprise/newsroom/cf/_getdocument.cfm?doc_id=7010.

[12] Remarks by Rafendi Djamin, representativeof Indonesia to the Intergovernmental Commission on Human Rights of the Association of Southeast Asian Nations, at the Asia Pacific Forum of National Human Rights Institutions Regional Conference on Business and Human Rights, Seoul, 11 to 13 October 2011.

[13] See www.unglobalcompact.org/.

commitment undertaken by some 8,700 corporate participants in the Global Compact[14] from over 130 countries.

27. Overall, the Global Compact pursues two complementary objectives:

(a) To mainstream the 10 principles in business activities around the world;

(b) To catalyse actions in support of broader United Nations goals, including the Millennium Development Goals. The 10 universally accepted principles address issues related to human rights, labour, the environment and anti-corruption. Two of the principles concerning the observance of human rights are particularly relevant:

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and

Principle 2: make sure that they are not complicit in human rights abuses.

28. The Global Compact incorporates a transparency and accountability policy known as the Communication on Progress. The annual posting of a communication on progress is an important disclosure of a participant's commitment to the Global Compact and its principles. Participating companies are required to follow this policy, as a commitment to transparency and disclosure is critical to the success of the initiative. Failure to follow this guideline can result in a downgrade of participant status and even to possible expulsion.

29. Following the endorsement of the Guiding Principles by the Human Rights Council the Global Compact has communicated to its members that the commitment participating companies undertake with regard to Principle 1 corresponds to the requirements contained under the corporate responsibility to respect in the Guiding Principles. The Global Compact is committed to ensuring that all tools and guidance materials for participating companies on human rights are aligned with the Guiding Principles.

3. Businesses operating in situations of armed conflict and occupation

30. In armed conflict, the standards of international humanitarian law apply to business enterprises as well as to others.[15] International humanitarian law grants protection to business personnel — provided they do not take part directly in armed hostilities — as well as to the assets and capital investments of enterprises. It also imposes obligations on staff not to breach international humanitarian law and exposes them — and the enterprises themselves — to criminal or civil liability in the event that they do so. The International Committee of the Red Cross (ICRC) has developed guidance on the rights and obligations of business enterprises under international humanitarian law.[16]

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[14] Global Compact and Office of the United Nations High Commissioner for Human Rights, "The UN Guiding Principles on Business and Human Rights: Relationship to UN Global Compact Commitments", July 2011; available from www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/GPs_GC%20note.pdf.

[15] See www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf, p. 12.

[16] *Business and International Humanitarian Law: An Introduction to the Rights and Obligations of Business Enterprises under International Humanitarian Law* (International Committee of the Red Cross, 2006). See also Eric Mongelard, "Corporate civil liability for violations of international humanitarian law", *International Review of the Red Cross*, vol. 88. No. 863, September 2006.

31. Gross human rights abuses involving businesses often occur amid conflict over the control of territory, resources or a Government, where the mechanisms for human rights fulfilment and enforcement are not functioning as intended. Businesses that seek to avoid being complicit in human rights violations are increasingly seeking guidance from the States in which they operate.

32. The risks of operating a business in a conflict-affected area can be high and therefore States should warn organizations of the potential for violating human rights as a result of business activities. States should review whether their policies, legislation, regulations and enforcement measures effectively address these heightened risks, including encouraging businesses to use due diligence to assess their own situation. Appropriate steps should furthermore be taken to address gaps identified. This may include exploring civil, administrative or criminal liability for enterprises domiciled or operating in their territory and/or jurisdiction that commit or contribute to abuses or violations of international law.

33. The costs to companies and businesses of failing to respect international humanitarian law are considerable, including damage to a company's public image and impact on shareholder decisions and share price, and could result in employees being criminally responsible for rights abuses. According to ICRC, "International humanitarian law states that not only perpetrators, but also their superiors and accomplices may be held criminally responsible for the commission of war crimes. Of these forms of commission, complicity is likely to be the most relevant to business enterprises."[17]

34. Immunity from international crimes cannot be sought by employees of businesses simply because they are operating in the name of a business. Employees of companies can face investigation and prosecution for human rights violations committed irrespective of where the violation was committed and thus States have an obligation to take the appropriate action. ICRC warns that: "Business enterprises should therefore not discount the possibility of legal proceedings simply because the country where they are operating is unlikely to conduct criminal investigations or incapable of doing so. The risk of corporate and individual responsibility for crimes perpetrated in the context of an armed conflict is thus an element of growing importance in a business enterprise's assessment of the range of risks associated with its activities during an armed conflict."[18]

35. Civil liability is also increasingly being used as a means to bring human rights and international humanitarian law abuses committed by corporations to light, and as a way to provide an effective remedy for victims. At times, companies work with State actors, including military forces, to secure and/or extract natural resources, resulting in what has been termed "joint action".

36. *Doe v. Unocal Corporation* is one example where civil action was taken in relation to serious human rights abuses, such as torture, rape, forced labour and displacement.[19] In the United States, the Court of Appeals for the Ninth Circuit[20] applied a complicity theory from criminal law, namely that of aiding and abetting,

[17] www.icrc.org/eng/assets/files/other/icrc_002_0882.pdf, p. 26.

[18] Ibid.

[19] www.icrc.org/eng/assets/files/other/irrc_863_mongelard.pdf, p. 15.

[20] United States Court of Appeals for the Ninth Circuit, Doe v. Unocal Corp., judgement of 18 September 2002.

and thus ruled that, when combined with the fact that Unocal Corporation had knowledge of the human rights violations before becoming party to the relevant venture, there was sufficient evidence to hold Unocal liable. The case of Bil'in Village Council[21] against the Canadian company Green Park International is a civil liability case brought to the Canadian court system. The plaintiffs argued that Green Park International was involved in building and promoting a settlement built on the land of the people of Bil'in. The Canadian courts accepted the fact that corporations have obligations to avoid participating, even indirectly, in a breach by Israel of its obligations under the Fourth Geneva Convention, and that the obligations contained in the Convention do not bind only States parties. However, the superior court declined to consider the case further, on the basis that Israeli courts provided a more appropriate forum (*forum non conveniens* doctrine).[22] In regard to this particular case, the Special Rapporteur would note the long track record of the Israeli court system deciding against Palestinian plaintiffs, which results in near total impunity for the actions of Israel and Israeli settlers in the West Bank, including East Jerusalem. In this context the Special Rapporteur would question the validity of this particular decision.

V. Case studies

37. The Special Rapporteur notes that the businesses highlighted in this report constitute a small portion of a wide range of companies that have linked their business operations to Israel's settlements in the occupied Palestinian territory. The Special Rapporteur received a large amount of information from stakeholders concerning business practices of companies in relation to Israel's settlements; further investigations will be made to determine whether those allegations are well founded and may lead to additional attention in future reports. The businesses include, inter alia, retailers and supermarket chains, fast food suppliers, wine producers and products that are often labelled "products of Israel", but are in reality produced or extracted from the occupied Palestinian territory. They include small, medium and large Israeli-owned companies and multinational corporations. The Special Rapporteur limits coverage to selected illustrative cases; it proved necessary to exclude a significant amount of reliable information at this stage, owing in particular to the word limit imposed by the United Nations on this report.

1. Caterpillar Incorporated

38. Caterpillar[23] is one of the leading global manufacturers of construction and mining equipment. It is the world's largest maker of construction and mining equipment, diesel and natural gas engines, and industrial gas turbines, and has stated that it "drives positive and sustainable change on every continent".[24] Caterpillar's worldwide employment was 132,825 at the end of the second quarter of 2012. On 25 July 2012 Caterpillar announced an all-time quarterly record profit per share of $2.54. Sales and revenues were $17.37 billion, also an all-time record. Profit was $1.699 billion in the quarter.[25] The Chairman and Chief Executive Officer of

[21] Bil'in Village Council is the municipal authority over the Palestinian village of Bil'in.

[22] www.eilfe.com/online-courses/doc.../282-yassin-v-greenpark.html.

[23] www.caterpillar.com/home.

[24] www.caterpillar.com/cda/layout?x=7&m=390122.

[25] www.caterpillar.com/cda/files/3801914/7/Final%20%20Q2%202012%20Cat%20Inc%

Caterpillar, Doug Oberhelman, noted: "I am very pleased with Caterpillar's record-breaking performance in the second quarter. Our employees, dealers and suppliers across the globe are doing a superb job of executing our strategy."

39. Caterpillar has been publically criticized by various actors, including religious organizations, non-governmental organizations (NGOs) and United Nations mechanisms, for supplying to the Government of Israel equipment, such as bulldozers and construction apparatus, which is used in the demolition of Palestinian homes, schools, orchards, olive groves and crops. Amnesty International reported in 2004 on these violations[26] and noted that Caterpillar products are used in the construction of the wall, which was ruled contrary to international law by the International Court of Justice.[27] Human Rights Watch has reported periodically on Caterpillar products being used in human rights abuses, while the NGO War on Want produced a report that focused solely on Caterpillar's dealings with the Government of Israel.[28] Morgan Stanley Capital International's (MSCI) World Socially Responsible Index recently removed Caterpillar from its indexes,[29] stating, "Caterpillar was removed from several MSCI ESG Indices due to an Environmental, Social and Governance (ESG) rating downgrade. The company was removed from the MSCI World ESG Index, the MSCI USA ESG Index and the MSCI USA IMI ESG Index on March 1, 2012, following the February Index Review".[30] MSCI noted: "Caterpillar is involved in a long running controversy regarding the use of its bulldozers by the Israeli Defense Forces in the occupied Palestinian territories" and "MSCI ESG Research has assessed this human rights controversy since 2004. This controversy has been incorporated in the rating since then and, as such, did not trigger the ratings downgrade in February 2012." MSCI further stated that the controversy is accounted for in the community and society rating, which includes an assessment of company performance on human rights issues and accounts for 10 per cent of a company's ESG rating.

40. On 28 May 2004 the then Special Rapporteur on the right to food wrote to Caterpillar, highlighting his observations from a recent mission he had undertaken to the occupied Palestinian territory.[31] The Special Rapporteur on the right to food noted his concern in regard to the use of armoured bulldozers supplied by Caterpillar to destroy agricultural farms, greenhouses, ancient olive groves and agricultural fields planted with crops, as well as numerous Palestinian homes and sometimes human lives. The Special Rapporteur further noted that the increase in homelessness and loss of livelihood among the Palestinian people would limit their access to food, which was enshrined under article 11 of the International Covenant on Economic, Social and Cultural Rights. The widely publicized death of Rachel Corrie, a 23-year-old peace activist from the United States of America, on 16 March 2003, highlighted the use of Caterpillar products and brought world attention to the

20Release%20V2.pdf, p. 1.

[26] www.amnesty.org/en/library/asset/MDE15/033/2004/en/24cc1bb1-d5f6-11dd-bb24-1fb85fe8fa05/mde150332004en.html.

[27] www.icj-cij.org/docket/index.php?pr=71&code=mwp&p1=3&p2=4&p3=6&ca.

[28] www.waronwant.org/campaigns/justice-for-palestine/hide/inform/17109-caterpillar-the-alternative-report.

[29] www.aljazeera.com/news/middleeast/2012/06/201262711732387905.html.

[30] www.msci.com/resources/pdfs/ESG_Indices_General_QA_July_2012.pdf.

[31] http://unispal.un.org/unispal.nsf/e4f689b77065914485256c530073aa6b/bcffff2cc84ac9bc85256e2b00685371?OpenDocument.

demolition of Palestinian property. Ms. Corrie was protesting to prevent the demolition of a Palestinian home in Gaza and, despite being dressed in highly visible bright orange clothing, was killed when the Caterpillar bulldozer ran over her, fracturing her arms, legs and skull.[32]

41. Despite numerous reports, statements and advocacy regarding Caterpillar, the company continues to ignore the human rights implications of its activities in the occupied Palestinian territory. In recent years the Mission Responsibility through Investment Committee of the Presbyterian Church attempted to engage with Caterpillar[33] and noted: "Company officials made it clear that the company took no responsibility for the use of its products even by its dealers (the only party considered to be a customer), had no procedure in place for monitoring or ensuring compliance with Caterpillar's stated expectations even in a situation with a documented historic pattern of the equipment being used in human rights violations, and no desire to develop such a procedure. Further, they indicated that Caterpillar, although a global company doing business in virtually every country except where prohibited by U.S. law, had no capacity to evaluate whether particular actions are in accord with human rights conventions or international humanitarian law."[34]

42. Caterpillar has an extensive code of conduct.[35] The company states that: "The world is continually changing, and so is our business. But one thing that will never change is our commitment to maintaining the highest ethical standards. Our reputation is one of our greatest assets. Each of us has a responsibility to protect it — everyday."[36] Caterpillar's mission statement further claims that: "When faced with challenges, how we respond defines us. Our decisions, and ultimately our actions, tell the world who we are at Caterpillar."

2. Veolia Environnement

43. Veolia Environnement is a French multinational company operating in the water, waste management, and energy and transport sectors. The company was founded as Compagnie Générale des Eaux on 14 December 1853.[37] In its 2011 Annual and Sustainability Report Veolia reported a 3.1 per cent growth in revenue, raising its revenue to €29.6 billion. The company employs 331,266 employees worldwide and operates in 77 countries.[38]

44. Veolia has a 5 per cent share in the CityPass consortium, through its subsidiary Connex Israel, which was contracted by Israel to operate the light rail project in Jerusalem. The light rail is designed to connect the city of Jerusalem with Israel's illegal settlements. Veolia owns approximately 80 per cent of Connex Jerusalem, the company which operates the trains.[39] Furthermore, through its subsidiary company the Israeli Veolia group,[40] Veolia owns and operates the Tovlan landfill in the Jordan

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[32] www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12470&LangID=E.

[33] www.pcusa.org/media/uploads/mrti/pdfs/2012-mrti-report-9-9-11.pdf.

[34] www.pcusa.org/media/uploads/mrti/pdfs/2012-mrti-report-9-9-11.pdf, pp. 5-6.

[35] www.caterpillar.com/company/strategy/code-of-conduct

[36] www.uk.cat.com/cda/files/89709/7/English_OVIA_v05.pdf, p. 2.

[37] www.veolia.com/en/group/history/.

[38] www.veolia.com/veolia/ressources/documents/2/11886,RA_VEOLIA_2011_UK_72dpi.pdf, p. 5.

[39] Who Profits: Exposing the Israeli Occupation Industry (www.whoprofits.org/company/veolia-environnement).

[40] www.veolia-es.co.il/he/.

Valley of the occupied Palestinian territory. The Tovlan landfill is used to dump Israeli waste from both within Israel and Israeli settlements. Veolia furthermore operates buses linking Modi'in and Jerusalem via road 443 and thereby servicing the Israeli settlements of Giva'at Ze'ev and Mevo Horon.

45. In 2011 Veolia released its CSR (Corporate Social Responsibility) Performance Digest, a document in which the company makes clear that: "Whatever the geographical context, Veolia Environnement's activities must be carried out in compliance with both national standards and the recommendations of international organizations like the ILO and OECD, in particular as concerns respect for basic rights, accounting for cultural diversity and protecting the environment."[41]

46. Veolia is a member of the Global Compact and highlights the above-mentioned 10 principles in its CSR Performance Digest, including the two human rights related principles.

3. Group4Security

47. Group4Security (G4S) is a British multinational corporation that provides security services. G4S specializes in business processes and facilitation where security and safety risks are considered high. G4S boasts expertise in the assessment and management of security and safety risks for buildings, infrastructure, materials, valuables and people. G4S is the largest employer on the London Stock Exchange, with operations in more than 125 countries and over 657,000 employees. In 2011 the company reported turnover of £7.5 billion, of which 30 per cent came from developing markets.

48. G4S Israel (Hashmira) is the Israel subsidiary of G4S. The company provides resources and equipment for Israeli checkpoints. The company also provides security services to businesses in settlements, including security equipment and personnel to shops and supermarkets in the West Bank settlements of Modi'in Illit, Ma'ale Adumim and Har Adar and settlement neighbourhoods of East Jerusalem. In addition, after the company purchased Aminut Moked Artzi, an Israeli private security company, it took over its entire business operations, which include security services to businesses in the Barkan industrial zone located near the settlement of Ariel.[42]

49. In 2002, Lars Nørby Johansen, the then Chief Executive Officer,[43] stated that the company would withdraw from the West Bank: "In some situations there are other criteria that we must consider. And to avoid any doubt that Group 4 Falck [G4S][44] respects international conventions and human rights, we have decided to leave the West Bank." However, security activities have still continued through Hashmira's creation of another company, Shalhevet. "The partnership between Hashmira and Group 4 Falck will not accept new security contracts in the West Bank. As equal partners in Hashmira however, we must recognize that the Israeli

[41] www.veolia.com/veolia/ressources/documents/2/11983,2011-CSR-Performance-Digest.pdf, p. 7.

[42] www.whoprofits.org/company/g4s-israel-hashmira.

[43] 2005 Lars Nørby Johansen was succeeded as Chief Executive by Nick Buckles.

[44] In 2004 Securicor merged with Group 4 Falck's security businesses to form Group 4 Securicor and began trading on the London and Copenhagen Stock Exchanges.

shareholders strongly feel that they have a responsibility to the Israeli citizens, which the company has a contract to protect."[45]

50. In March 2011 G4S issued a public statement, regarding its operations in Israeli settlements.[46] The statement included the following: "we have also concluded that to ensure that our business practices remain in line with our own Business Ethics Policy, we will aim to exit a number of contracts which involve the servicing of security equipment at the barrier checkpoints, prisons and police stations in the West Bank."[47] The company further concluded: "a number of our contracts with private enterprises in the area for traditional security and alarm monitoring services are not discriminatory or controversial and in fact help to provide safety and security for the general public no matter what their background"[48] and thus it would not end all operations in Israeli settlements.

51. G4S has joined the Global Compact Group and when doing so its Chief Executive Officer, Nick Buckles, stated: "The principles set out in the Compact are already pretty well embedded in our existing policies, so we thought the time was right to make a public commitment to this excellent initiative." He further stated: "Doing so will give us extra impetus to ensure respect for human rights, the environment and ethical behaviour are part of everything we do worldwide."[49]

4. Dexia Group

52. The Dexia Group is a European banking group which, in 2011, carried out activities in the fields of retail and commercial banking, public and wholesale banking, asset management and investor services. Its parent company, Dexia SA, is a limited company under Belgian law with its shares listed on Euronext Brussels and Paris as well as the Luxembourg Stock Exchange.[50]

53. Dexia Israel Bank Limited is a public company and is traded on the Tel Aviv Stock Exchange. The Dexia Group is the majority shareholder, with 65 per cent of its shares. Dexia Israel Bank Limited is based in Tel Aviv and has consistently provided loans to Israelis living in illegal settlements.[51] Dexia Israel Bank Limited's Chief Executive Officer, David Kapah, highlighted which settlements in the occupied Palestinian territory have received loans: Alfei Menasheh, Elkana, Beit-El, Beit Aryeh, Giva'at Ze'ev and Kedumim, located in the region of the Jordan Valley, the Hebron region and Samaria.[52] The company has supplied mortgages to a number of settlements. Through its dealings with the Israeli National Lottery, Dexia Israel has provided funds for the construction and development of settlements.[53]

54. The Dexia Group has been a member of the Global Compact Group since February 2003. According to the Global Compact Group website the Dexia Group was required to communicate, early in 2012, on progress made by the company in

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[45] http://politiken.dk/erhverv/ECE54474/falck-forlader-vestbredden/ (in Danish).

[46] http://corporateoccupation.files.wordpress.com/2011/03/g4s-israel-statement-march-11-1-1.pdf.

[47] Ibid.

[48] Ibid.

[49] www.g4s.com/en/Media%20Centre/News/2011/02/23/G4S%20joins%20the%20UN%20Global%20Compact%20for%20responsible%20business/.

[50] www.dexia.com/EN/the_group/profile/Pages/default.aspx.

[51] www.knesset.gov.il/mmm/data/pdf/m01630.pdf (in Hebrew).

[52] /www.knesset.gov.il/protocols/data/rtf/ksafim/2007-06-19-02.rtf (in Hebrew).

[53] www.whoprofits.org/sites/default/files/WhoProfits-IsraeliBanks2010.pdf.

implementing the standards set by the Group; that communication on progress is now several months overdue.[54]

5. Ahava

55. Ahava[55] is an Israeli cosmetics company that manufactures high-end skin care products from natural resources extracted from the Dead Sea. The company was created in 1988 and is said to have annual revenue of $142 million. The company is 37 per cent owned by the settlement of Kibbutz Mitzpe Shalem, 37 per cent owned by Hamashbir Holdings,[56] 18.5 per cent by Shamrock Holdings[57] and 7.5 per cent by the settlement of Kibbutz Kalia. Ahava's manufacturing factory and visitor centre is located at Kibbutz Mitzpe Shalem, a settlement in the Jordan Valley. Ahava exports products to 32 countries and one special administrative region.[58]

56. Criticism of Ahava has come from Governments and non-governmental and civil society organizations alleging that by having ownership of the company the settler communities are exploiting Palestinian natural resources and that the profits from these business activities fund and sustain the settlements. Ahava has also been accused of false advertising and misleading its customers, as it labels its products "products of Israel". They are in fact products of the occupied Palestinian territory. Several European countries have started to take action against Ahava. The Governments of the Netherlands[59] and the United Kingdom[60] have investigated Ahava's misleading labelling of its products. Human rights activists have taken legal action against the French company Sephora [61] for distributing Ahava products.

57. The report of April 2012 by the Coalition of Women for Peace, entitled "Ahava, tracking the trade trail of settlement products",[62] highlights the supply chain of Ahava's products and analyses how Palestinian natural resources are being exploited to the profit of Israeli settlers.

6. Volvo Group

58. The Volvo Group[63] is one of the world's leading manufacturers of trucks, buses, construction equipment, drive systems for marine and industrial applications and aerospace components. Volvo also provides financing and other services. Volvo has about 100,000 employees, production facilities in 20 countries and sales in more than 190 markets. In 2011, Volvo's sales increased by 17 per cent, to SKr 310,367 million, compared with SKr 264,749 million in 2010.

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[54] www.unglobalcompact.org/participant/2887-Dexia-Group.

[55] www.ahava.co.il/ and http://www.ahava.com/.

[56] www.whoprofits.org/company/hamashbir-holdings.

[57] A multi-million dollar United States-based investment company; www.shamrock.com/.

[58] Albania, Australia, Austria, Azerbaijan, Belgium, Canada, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Georgia, Greece, Hungary, Italy, Japan, Kyrgyzstan, Lithuania, Mauritius, Netherlands, Norway, Philippines, Russian Federation, Singapore, Slovenia, South Africa, Switzerland, Ukraine, United Kingdom, United States and Hong Kong, China.

[59] www.ynetnews.com/articles/0,7340,L-3806790,00.html.

[60] www.westendextra.com/news/2010/aug/pro-palestinian-protesters-claim-covent-garden-storeahava-are-mislabelling-products.

[61] www.sephora.com/.

[62] www.whoprofits.org/sites/default/files/ahava_report_final.pdf.

[63] www.volvogroup.com/group/global/en-gb/Pages/group_home.aspx.

59. Volvo equipment and products are used in the demolition of Palestinian homes, the construction of the wall and the construction of Israeli settlements. Further, Volvo holds a 27 per cent share in the Israeli company Merkavim,[64] which is a business that manufactures buses that are used to transport Palestinian political prisoners from the occupied Palestinian territory to prisons in Israel. The other 73 per cent of Merkavim shares are owned by Mayer's Cars and Trucks, an Israeli company that exclusively represents Volvo in Israel.

60. In July 2007, the Volvo Vice President for Media Relations and Corporate News, Mårten Wikforss, responded[65] to criticism relating to the demolition of a Palestinian home in Beit Hanina, East Jerusalem.[66] Mr. Wikforss stated: "It is, of course, regrettable and sad if our products are used for destructive purposes. We do not condone such actions, but we do not have any control over the use of our products, other than to affirm in our business activities a Code of Conduct that decries unethical behaviour. However, just as a wheel loader can be used to clear the ground for a new house, it can be used to tear it down."[67] He further stated: "There is no way Volvo ultimately can control the use of its products ... The only restrictions that apply are when the buyer is a country affected by applicable trade sanctions decided on by international governmental organizations and implemented under mandatory law ... Like other multinational enterprises, we rely on governments and certain international governmental organizations to make such determinations."

61. Volvo produces responsibility reports that assess the economic, environmental and social responsibility of its business activities. Volvo also has a code of conduct that identifies three areas where Volvo is committed, including respect for human rights and social issues, environmental care and business ethics. Volvo has been a member of the Global Compact Group since 2001 and has noted: "Volvo pledges to realize and integrate 10 principles regarding human rights, work conditions and environment into its operations. Volvo will also be involved in disseminating the principles in a bid to encourage other companies to support the Global Compact."[68]

7. Riwal Holding Group

62. The Riwal Holding Group, established in 1968 and headquartered in the Netherlands, is an international aerial work platform rental specialist. Riwal employs 800 people and has operations in 16 countries. It is one of Europe's leading companies specialized in the rental and sales of telescopic booms, scissor lifts, telehandlers, aerial work platforms and other access equipment. Riwal has operations and joint ventures in Europe, South America, the Middle East and central Asia.

63. In March 2010 the Palestinian human rights NGO Al-Haq[69] submitted a criminal complaint to the Netherlands authorities that alleges that Riwal was complicit in war crimes and crimes against humanity, because of the use of its

[64] www.whoprofits.org/company/merkavim-transportation-technologies.

[65] www.business-humanrights.org/Links/Repository/553890.

[66] http://electronicintifada.net/content/volvo-symbol-safety-or-human-rights-abuses/7040.

[67] www.reports-and-materials.org/Volvo-response-to-Israel-OT-article-6-Jul-2007.doc (full statement).

[68] www.volvogroup.com/group/global/en-gb/responsibility/Pages/responsibility.aspx.

[69] www.alhaq.org/.

construction equipment and operations in the building of the wall and Israeli settlements.[70] The NGO United Civilians for Peace[71] also investigated the activities of Riwal and urged the company to stop its activities in the occupied Palestinian territory. In October 2010 Riwal's offices were raided by the Netherlands National Crime Squad following such criminal complaints.[72] Riwal has been criticized by members of the Netherlands Parliament, most notably by the then Minister for Foreign Affairs, who noted the undesirability of a Netherlands company being involved the construction of the wall.[73]

8. Elbit Systems

64. Elbit Systems[74] is an Israeli defence electronics company. It works on aerospace, land and naval systems, command, control, communications, computers, intelligence surveillance and reconnaissance, unmanned aircraft systems, advanced electro-optics, electro-optic space systems, airborne warning systems, electronic signals intelligence, data links and military communications systems and radios. In 2010, the total number of employees worldwide was 12,317 and the annual revenue was $2,670 million.[75]

65. In addition to supplying drones and other arms to the Government of Israel,[76] Elbit has been criticized for its electronic surveillance developed for use on the wall[77] and its surveillance equipment used in Israeli settlements.[78] In 2009 the Norwegian Ministry of Defence[79] excluded the company from Norway's Pension Fund on the recommendation of the Norwegian Government's Council of Ethics.[80] That recommendation was based on the advisory opinion of the International Court of Justice regarding the wall. The Norwegian Minister of Finance, Kristin Halvorsen, stated: "We do not wish to fund companies that so directly contribute to violations of international humanitarian law." In 2010 the Deutsche Bank and the Swedish AP funds[81] also sold all their shares in Elbit Systems[82] following the example of the Norwegian Ministry of Defence.[83]

66. Elbit's Social Responsibility Full Report states that Elbit Systems is "committed to being a good corporate citizen and an advocate for social and environmental responsibility".[84]

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[70] www.alhaq.org/images/stories/PDF/accoutability-files/Complaint%20-%20English.pdf.

[71] www.unitedcivilians.nl/.

[72] http://electronicintifada.net/content/dutch-company-raided-over-involvement-occupation/9076.

[73] www.haaretz.com/news/dutch-gov-t-warns-company-to-stop-work-on-w-bank-fence-1.225134.

[74] www.elbitsystems.com/elbitmain/default.asp.

[75] http://media.corporate-ir.net/media_files/IROL/61/61849/20_F.pdf, p. 11.

[76] www.grassrootsonline.org/; www.bdsmovement.net/; www.amnesty.org.uk/news_details.asp?NewsID=18004.

[77] www.bdsmovement.net/files/2011/08/STW-research-green-paper-consultation.pdf.

[78] www.globalexchange.org/economicactivism/elbit/why; http://wedivest.org/learn-more/elbit/; www.bdsmovement.net/files/2011/08/STW-research-green-paper-consultation.pdf; http://stopthewall.org/divest-elbit.

[79] www.regjeringen.no/en/dep/fin/press-center/Press-releases/2009/supplier-of-surveillance-equipment-for-t.html?id=575444.

[80] www.regjeringen.no/pages/2236685/Elbit_engelsk.pdf.

[81] http://stopthewall.org/divest-elbit.

[82] www.reuters.com/article/2010/05/30/us-deutsche-elbit-idUSTRE64T10W20100530.

[83] www.israelnationalnews.com/News/News.aspx/137762#.UC0BVlaTspo.

[84] www.elbitsystems.com/elbitmain/pages/FullReport.asp.

9. Hewlett Packard

67. Hewlett Packard (HP)[85] is the world's largest provider of information technology infrastructure, software and related services.[86] HP is a United States information technology corporation headquartered in California.[87] In 2011, the company's total net revenue was $127,245 million and it employed approximately 349,600 persons worldwide.[88] HP has more than 1 billion customers in 170 different countries and in 2012 its Fortune 500 ranking was 10.[89]

68. HP has contracts with the Israeli Ministry of Defence and the Ministry of the Interior to provide a system of surveillance and identification,[90] the "Basel biometric system", the Israeli identity card system (biometric identity cards, implemented by the biometric database law) in settlements and checkpoints,[91] and to provide services and technologies to the Israeli army. The Basel system is an automated biometric access control system.[92]

69. It has been alleged that the technological systems provided by HP have resulted in human rights violations, such as restricting freedom of movement of Palestinians. The products provided by HP to the Israeli Government and their use in violations have been well documented by NGOs such as Who Profits,[93] as has the humanitarian impact of the wall by the Office for the Coordination of Humanitarian Affairs.[94] HP has also been criticized for providing security and technological services to the settlements of Modi'in Illit and Ariel.

70. Nonetheless, in 2010, HP was named one of the world's most ethical companies in computer hardware by the Ethisphere Institute.[95] That same year, HP was number 2 on Newsweek's 2010 "green rankings" on both the United States 500 and the global 100 greenest companies lists.[96] Since 2002, HP is an active participant in the Global Compact.[97]

71. HP states in its corporate responsibility policy "Global Citizenship"[98] that "everyone is entitled to certain fundamental rights, freedoms, and standards of treatment. Respecting these human rights is core to HP's shared values and is part of the way we do business."[99] Through the "Global Human Rights Policy"[100] the company is committed to integrating respect for human rights in its business as well as "complying with laws and regulations or international standards".

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[85] www8.hp.com/us/en/home.html.

[86] Annual report 2011, p. 2: http://h30261.www3.hp.com/phoenix.zhtml?c=71087&p=irol-reportsAnnual.

[87] www8.hp.com/us/en/hp-information/about-hp/headquarters.html.

[88] Annual report 2011, p. 23.

[89] www8.hp.com/us/en/hp-information/facts.html.

[90] www.whoprofits.org/sites/default/files/hp_report-_final_for_web.pdf.

[91] http://abna.ir/data.asp?lang=3&Id=331748.

[92] www.whoprofits.org/company/hewlett-packard-hp.

[93] www.whoprofits.org/sites/default/files/hp_report-_final_for_web.pdf.

[94] www.ochaopt.org/documents/Pages1-23_Jerusalem_30July2007.pdf.

[95] http://ethisphere.com/past-wme-honorees/wme2010/.

[96] www.hp.com/hpinfo/newsroom/hp360_ww.pdf.

[97] www.unglobalcompact.org/participant/4833-Hewlett-Packard-Company.

[98] www.hp.com/hpinfo/globalcitizenship/.

[99] www.hp.com/hpinfo/globalcitizenship/society/ethics.html.

[100] www.hp.com/hpinfo/globalcitizenship/humanrights.html.

10. Mehadrin

72. Mehadrin is one of Israel's largest agricultural companies. It grows and exports citrus, fruits and vegetables worldwide. Mehadrin holds 10,341 acres of orchards and uses 29,452 hectares of orchards owned by external customers.[101] Mehadrin owns 50 per cent of STM Agricultural Export Limited, which exports vegetables, and 50 per cent of Mirian Shoham, which exports mangoes. Agrexco, one of the main agricultural exporters to Europe, was also bought by Mehadrin. The Mehadrin group also holds subsidiaries in France, the Netherlands, Sweden and the United Kingdom.

73. The majority of Mehadrin's products originate from settlements in the occupied Palestinian territory but they are labelled as products from Israel. Furthermore, Mehadrin participates in implementing Israel's discriminatory water policies, supplying Israeli farmers with millions of cubic metres of water while Palestinians are denied sufficient water.[102]

74. Mehadrin states that its concept of quality comprises "environmentally friendly practices, stringent quality assurance measures, social awareness and continuous improvement through research and innovation"[103] and that "transparency is a basic value in Mehadrin and our knowledge and data is openly shared with our clients".[104]

11. Motorola Solutions Inc.

75. Motorola Solutions Inc. is a United States multinational information technology corporation. It has over 23,000 employees in 65 countries, sales in 100 countries and a total income of $2.1 billion in the second quarter of 2012.[105]

76. Motorola Solutions Israel was the first branch of Motorola outside the United States and had, in 2010, total revenue of $505 million. The company specializes in "marketing and selling communication solutions and systems for military and security forces, emergency and public safety forces, government and public institutions, and commercial and private entities".[106]

77. Motorola Israel provides surveillance systems to Israeli settlements and checkpoints on the wall. In 2005,[107] it was reported that Motorola Solutions Inc. provided radar detectors to Israeli settlements in Hebron, Karmei Tzur and Bracha. The company has allegedly provided a radar detector system named "MotoEagle Surveillance" and a mobile communication system, the "Mountain Rose", to Israeli settlements. Beyond sustaining the settlements, these security systems further limit the Palestinians' freedom of movement within their territory.

78. Motorola Solutions Inc. has an extensive corporate responsibility policy[108] and has a section of its 2011 annual corporate responsibility report dedicated to human rights, noting: "Motorola Solutions' human rights policy is based on our long-

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[101] www.whoprofits.org/content/mehadrin-group-update.
[102] www.blueplanetproject.net/documents/RTW/RTW-Palestine-1.pdf.
[103] www.mehadrin.co.il/docs/P124/.
[104] www.mehadrin.co.il/docs/P200/.
[105] http://investing.businessweek.com/research/stocks/earnings/earnings.asp?ticker=99186.
[106] http://duns100.dundb.co.il/ts.cgi?tsscript=comp_eng&duns=600020978.
[107] www.whoprofits.org/company/motorola-solutions-israel,
[108] http://responsibility.motorolasolutions.com/.

standing key beliefs of uncompromising integrity and constant respect for people, and is consistent with the core tenets of the International Labour Organization's fundamental conventions and the United Nations Universal Declaration of Human Rights".[109] The company furthermore highlights its willingness to work with the NGO community as a "key stakeholder" and has a policy for the implementation of due diligence.

12. Mul-T-Lock/Assa Abloy

79. Founded in 1973,[110] Mul-T-Lock is an Israeli company. In 2000, Mul-T-Lock was bought by Assa Abloy, a Swedish company and member of the Global Compact. Mul-T-Lock describes itself as a "worldwide leader in developing, manufacturing, marketing and distributing High Security solutions for institutional, commercial, industrial, residential and automotive applications".

80. Mul-T-Lock manufactures locks and security products. It has a manufacturing plant located in the Barkan industrial zone, which is in the Israeli settlement of Ariel.[111]

81. In a joint report the Church of Sweden and the NGOs Diakonia and SwedWatch highlighted some of Assa Abloy activities and alleged that the company was complicit in impeding the peace process, since it has invested heavily in its manufacturing plant, which is built on confiscated Palestinian land.

82. Assa Abloy reviewed its code of conduct policy in January 2007 to cover issues such as freedom of association, discrimination, environmental practices and health and safety aspects. It is based on the Universal Declaration of Human Rights and relevant United Nations conventions, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the OECD Guidelines for Multinational Enterprises, the Global Compact and ISO 14001. Assa Abloy has had a code of conduct policy in place since 2004 and became a member of the Global Compact in May 2008.

83. Assa Abloy notes that circumstances may arise that require human rights perspectives other than those mentioned in the code: "Even if such circumstances are not common, Assa Abloy is aware of the potential impact on human rights and acts according to relevant international or local law. If no official guidelines are available, Assa Abloy will seek other sources so as to choose the best approach under the specific circumstances."[112]

13. Cemex

84. Cemex[113] is a Mexican company and world leader in the building materials industry. It produces, distributes and sells cement, ready-mix concrete, aggregates

[109] Ibid., p. 11.

[110] www.mul-t-lock.com/87.html.

[111] www.diakonia.se/documents/public/IN_FOCUS/Israel_Palestine/Report_Illegal_Ground/Report_Mul-T-lock_081021.pdf.

[112] Assa Abloy Code of Conduct, section 3.9; www.diakonia.se/documents/public/IN_FOCUS/Israel_Palestine/Report_Illegal_Ground/Report_Mul-T-lock_081021.pdf.

[113] Ibid.

and related building materials. The total amount of annual sales is US$15.1 billion. The company employs 44,104 worldwide.[114]

85. Cemex owns Readymix Industries, an Israeli company that owns plants in the West Bank (Mevo Horon and the Atarot and Mishor Edomim industrial zones)[115] and has provided elements for the construction of settlements.[116] This company also provides concrete for the construction of Israel's wall and military checkpoints in the West Bank.

86. Through ReadyMix Idustries, Cemex also owns 50 per cent of Yatir quarry, an Israeli settlement where Palestinian natural resources are mined to be exploited by the Israeli construction industry. In 2009, the NGO Yesh-din filed a petition with the Israeli High Court describing these activities as "colonial exploitation of land" and "pillage" and asking Israel's High Court of Justice to intervene. The High Court decided in December 2011 not to halt these activities, since they employ Palestinians. However, the court recommended that Israel not open any new quarries in the West Bank.[117]

87. Cemex states in its code of ethics[118] that it "must endeavour to enhance our reputation as a responsible and sustainable company, which helps to attract and retain employees, customers, suppliers and investors, as well as maintain good relationships in the communities we operate".

VI. Conclusion

88. The failure to bring the occupation to an end after 45 years creates an augmented international responsibility to uphold the human rights of the Palestinian people, who in practice live without the protection of the rule of law. In this context, the Special Rapporteur recalls that the General Assembly, as early as 1982,[119] called on Member States to apply economic sanctions against the State of Israel for its unlawful settlement activities.

89. The Guiding Principles on Business and Human Rights require all business enterprises to respect human rights, which means, in the first instance, avoiding infringing on the human rights of others and addressing adverse impacts on human rights. The Special Rapporteur calls on both States and business enterprises to ensure the full and effective implementation of the Guiding Principles in the context of business operations relating to Israeli settlements in the occupied Palestinian territory.

90. The Special Rapporteur reiterates that the businesses highlighted in this report constitute a small portion of the many companies that engage in profit-making operations in relation to Israeli settlements in the occupied Palestinian territory. The Special Rapporteur is committed to seeking clarification from and otherwise following up with the corporations highlighted in this report. At the same time, the

[114] www.cemex.com/AboutUs/CompanyProfile.aspx.

[115] www.whoprofits.org/sites/default/files/cemex_corporate_watch_may_2011.pdf.

[116] www.whoprofits.org/company/cemex.

[117] www.whoprofits.org/content/israeli-high-court-justice-legalizes-exploitation-natural-resources-opt.

[118] www.cemex.com/AboutUs/files/HighlightsCoE.pdf.

[119] Resolution ES-9/1 (5 February 1982); see also resolution 38/180 A (19 December 1983).

Special Rapporteur may continue to gather information and report on the involvement of corporations in Israel's settlement activities.

91. The Special Rapporteur further concludes that all companies that operate in or otherwise have dealings with Israeli settlements should be boycotted, until such time as they bring their operations fully into line with international human rights standards and practice. In this regard, civil society efforts to pursue the implementation of the Guiding Principles establish a distinctive space between voluntary and obligatory action in the struggle to protect persons vulnerable to human rights abuse.

VII. Recommendations

92. **The Special Rapporteur calls on the Government of Israel to desist from settling its population in the occupied Palestinian territory and begin the process of dismantling its settlements and returning its citizens to its own territory, namely on the Israeli side of the Green Line, in accordance with international law, numerous Security Council and General Assembly resolutions and the advisory opinion of the International Court of Justice on the wall.**

93. **The Special Rapporteur calls on the Government of Israel to publicly inform all businesses with operations in or related to its settlements of the international legal ramifications of such operations, including in relation to civil liability in third countries.**

94. **The Special Rapporteur calls on the Government of Israel to immediately move forward with reparations to the Palestinian people — whether through land and monetary compensation or otherwise — in full and transparent consultation with affected Palestinians, for all activities related to its settlement enterprise since 1967, also ensuring that land used by businesses is restored to its condition status quo ante unless improved.**

95. **The Special Rapporteur calls on the businesses highlighted in this report, as a matter of urgency, to take transparent action to comply with the Guiding Principles on Business and Human Rights, the Global Compact and relevant international laws and standards, with respect to their activities connected with the Government of Israel and its settlements and wall in the occupied Palestinian territory, including East Jerusalem. This should include, as a first step, immediately suspending all operations, including the supply of products and services, which aid in the establishment or maintenance of Israeli settlements.**

96. **The Special Rapporteur calls on the businesses highlighted in this report, with respect to companies that are already signed up to the Global Compact, to be fully aware of the relevant integrity measures, particularly in the case of allegations of systematic or egregious abuses.[120] Company plans to exit the occupied Palestinian territory should identify and address any adverse human rights consequences arising from their exit and from past business activities.**

[120] www.unglobalcompact.org/AboutTheGC/IntegrityMeasures/index.html.

97. The Special Rapporteur calls on the businesses highlighted in this report, with respect to any company maintaining its operations in the occupied Palestinian territory, to conduct heightened due diligence in accordance with the Guiding Principles and international humanitarian law. Such companies should be able to demonstrate their own efforts to mitigate any adverse impact and be prepared to accept any consequences — reputation, financial or legal — of continuing their operations.

98. The Special Rapporteur calls on civil society to actively pursue legal and political redress against non-complying businesses, where necessary in their own national legal and political frameworks, especially where allegations of war crimes and crimes against humanity can be substantiated in relation to settlement activities.

99. The Special Rapporteur calls on civil society to vigorously pursue initiatives to boycott, divest and sanction the businesses highlighted in this report, within their own national contexts, until such time as they bring their policies and practices into line with international laws and standards, as well as the Global Compact.

100. The Special Rapporteur calls on civil society to share resources and information, including through establishing transnational collaborative networks and other initiatives, as a way of promoting transparency and accountability in relation to businesses involved in the Israeli settlement agenda.

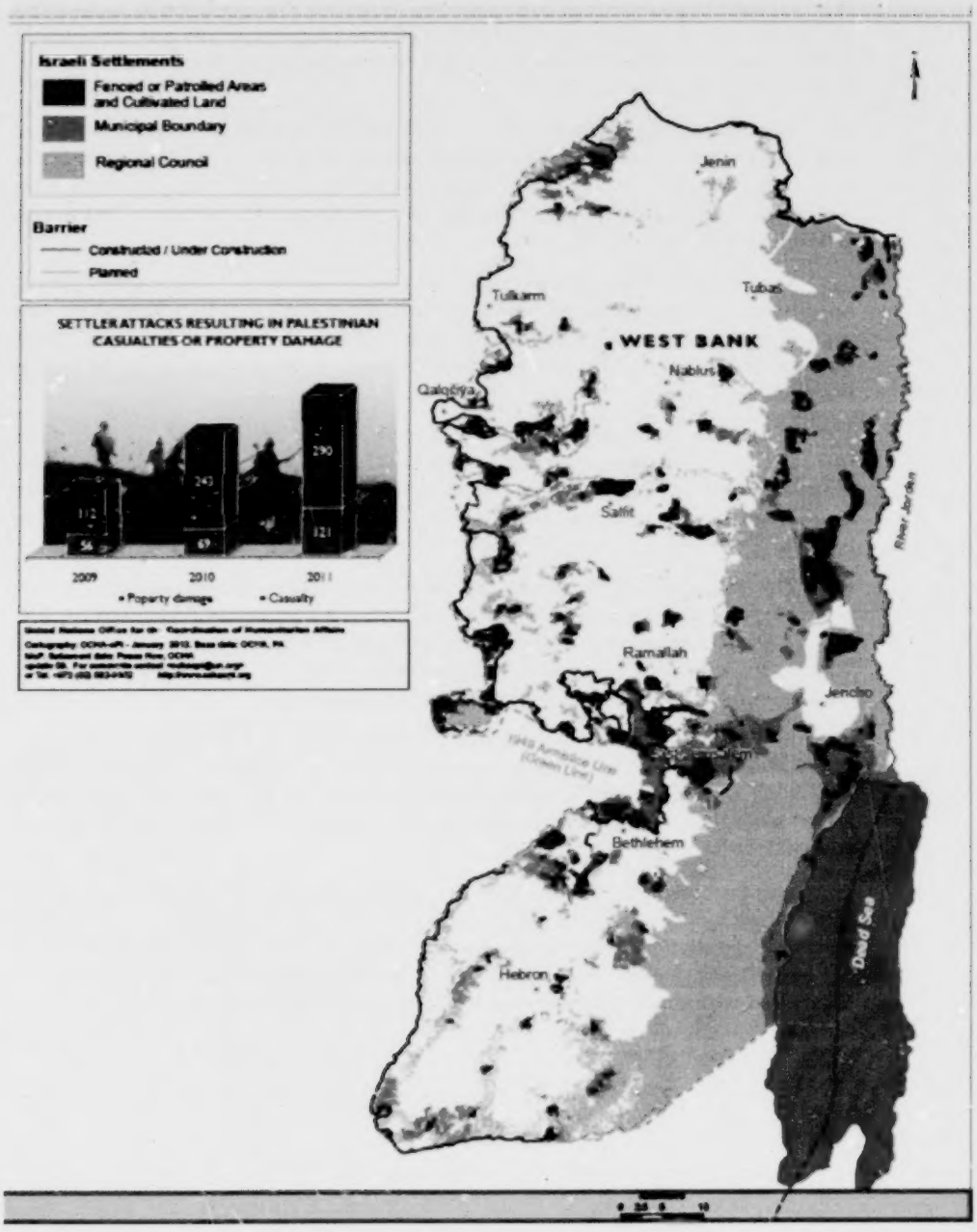
101. The Special Rapporteur calls on the international community to transparently investigate the business activities of companies registered in their own respective countries, especially those highlighted in this report, that profit from Israel's settlements, and take appropriate action to end such practices and ensure appropriate reparation for affected Palestinians.

102. The Special Rapporteur calls on the international community to consider requesting an advisory opinion from the International Court of Justice regarding the responsibility of businesses in relation to economic activities of settlements that are established in violation of article 49 of the Fourth Geneva Convention.

103. The Special Rapporteur calls on the international community to urge the General Assembly to prepare a document linking compliance with Global Compact guidelines with international human rights law in situations of belligerent occupation, with attention to moral, political and legal obligations associated with business operations in the occupied Palestinian territory.

Annex I

Land allocated to Israeli settlements, January 2012



Source: Office for the Coordination of Humanitarian Affairs.

Annex II

The humanitarian impact of Israeli settlement policies, January 2012

FAST FACTS

- Since 1967, Israel has established about 150 settlements (residential and others) in the West Bank, including East Jerusalem, in addition to some 100 "outposts" erected by settlers without official authorization.
- The settler population is estimated at approximately 500,000; its rate of growth during the past decade stood at a yea: / average of 5.3% (excluding East Jerusalem), compared to 1.8% by the Israeli population as-a-whole (ICBS).
- While fenced or patrolled areas of settlements cover three percent of the West Bank, 43% of the West Bank is off-limits for Palestinian use because of its allocation to the settlement's local and regional councils.
- Virtually all of the land viewed by Israel as public or "state land" (27% of the West Bank) has been allocated to settlements, rather than for the benefit of the local population (B'Tselem).
- About one third of the land within the settlements' outer limits is privately owned by Palestinians, according to official Israeli land records (Peace Now).
- Over 60 percent of the Palestinian-owned structures demolished in 2011, due to the lack of permit, were located in areas allocated to settlements.
- In 2011, five Palestinians (inc. two children) were killed and over 1,000 injured (of whom nearly a fifth were children) by Israeli settlers or security forces in incidents directly or indirectly related to settlements, including demonstrations.
- Over 90% of Israeli police investigations into incidents of settler violence during the past six years (2005-2010) were closed without indictment (Yesh Din).
- More than 500 internal checkpoints, roadblocks and other physical obstacles impede Palestinian movement inside the West Bank, including access of children to schools; they exist primarily to protect settlers and facilitate their movement, including to and from Israel.
- The location of settlements was the major consideration behind the deviation of the Barrier's route away from the Green Line; once complete, about 80% of the settler population will live in settlements located on the western ("Israeli") side of the Barrier.

Source: Office for the Coordination of Humanitarian Affairs.

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Item 70 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Khmer Rouge trials

Report of the Secretary-General

Summary

In its resolution 57/228 B, the General Assembly requested the Secretary-General to report to the Assembly at its fifty-eighth session on the implementation of that resolution. In his subsequent reports on the Khmer Rouge trials (A/58/617, A/59/432 and Add.1, A/60/565 and A/62/304), the Secretary-General provided information on the progress achieved towards establishing and operating the Extraordinary Chambers in the Courts of Cambodia, within the Cambodian domestic courts, for the prosecution under Cambodian law of crimes committed during the period of Democratic Kampuchea.

The present report provides details on the progress achieved by the Extraordinary Chambers since the most recent report of the Secretary-General and highlights the challenges faced, in particular the acute financial crisis that could jeopardize the future operations of the Chambers.

* A/67/150.

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I. Introduction

1. Since the previous reports of the Secretary-General on the Khmer Rouge trials (A/58/617, A/59/432 and Add.1, A/60/565 and A/62/304), the Extraordinary Chambers in the Courts of Cambodia have achieved substantial progress and demonstrated their capacity to conduct highly complex judicial proceedings in accordance with international standards. They have, however, also faced, and indeed continue to face, significant financial and political challenges in their endeavour to fulfil their mandate. The concerns raised in the report of the Secretary-General of 31 March 2003 (A/57/769) with regard to the funding modalities for the Chambers have proved well founded, with the Chambers now facing an acute financial shortfall that could imperil their future operations.

2. During the reporting period, the Extraordinary Chambers concluded all proceedings in case 001 against Kaing Guek Eav, alias "Duch", the former head of S-21, a Khmer Rouge torture and execution centre. Duch was convicted and sentenced to 35 years' imprisonment by the Trial Chamber. Following an appeal, his sentence was increased by the Supreme Court Chamber to that of life imprisonment. The trial in case 002, against four surviving senior leaders of the Khmer Rouge regime, began in June 2011. Many Cambodians and foreigners have attended the judicial proceedings in both cases, with the national and international press reporting on them extensively and positively.

3. Cases 003 and 004 are in the investigation phase. The co-prosecutors have stated publicly that there will be no further cases.

II. Progress made in the cases

A. Case 001: Kaing Guek Eav, alias "Duch"

4. Case 001 was the first case tried before the Extraordinary Chambers. The single accused, Kaing Guek Eav, alias "Duch", was the deputy head of S-21 from 15 August 1975 to March 1976 and the head of S-21 from March 1976 until the collapse of the Democratic Kampuchea regime in January 1979. S-21 was a security centre in Phnom Penh where perceived opponents of the Communist Party of Kampuchea were sent for interrogation, torture and execution.

5. On 8 August 2008, the co-investigating judges issued a closing order in which they indicted Duch for crimes against humanity and grave breaches of the Geneva Conventions of 1949. Following an appeal by the co-prosecutors, the closing order was partially amended by the Pre-Trial Chamber to add the domestic crimes of torture and premeditated murder as defined in the 1956 Penal Code of Cambodia to the indictment. The Pre-Trial Chamber sent the accused for trial on the basis of the amended closing order.

6. The initial hearing before the Trial Chamber was held on 17 and 18 February 2009. The substantive trial hearing began on 30 March and concluded in November. On 26 July 2010, the Trial Chamber convicted Duch of crimes against humanity and grave breaches of the Geneva Conventions of 1949, sentencing him to 35 years' imprisonment. The co-prosecutors, the accused and civil parties appealed against the judgement to the Supreme Court Chamber.

7. On 3 February 2012, the Supreme Court Chamber rendered its decision. It affirmed the conviction for crimes against humanity of persecution and entered additional convictions for crimes against humanity of extermination (encompassing murder), enslavement, imprisonment, torture and other inhumane acts. It quashed the decision of the Trial Chamber to grant a remedy for the violation of the accused's rights occasioned by his illegal detention by a Cambodian military court between 10 May 1999 and 30 July 2007. It granted 10 further civil party applications and affirmed the decision of the Trial Chamber to compile and post on the website of the Extraordinary Chambers all statements of apology and acknowledgements of responsibility made by the accused during his trial and appeal proceedings. Moreover, it dismissed Duch's appeal, in which he had argued that he did not fall within the jurisdiction of the Chambers. Lastly, the Supreme Court Chamber ordered the accused to remain in the custody of the Chambers pending the finalization of arrangements for his transfer, in accordance with the law, to the prison in which his sentence would continue to be served. That decision of the Supreme Court Chamber concluded the judicial activities in the case. In accordance with the Internal Rules, the co-prosecutors requested the enforcement of the remainder of Duch's sentence and that he should remain in the detention facility of the Chambers during the period that he was required to testify in case 002.

8. Case 001 afforded the first opportunity for Cambodians to witness justice being rendered for crimes committed during the period of Democratic Kampuchea (1975-1979), during which some 2 million people died. More than 30,000 Cambodians attended the trial. The case sent a clear signal to the Cambodian people and the international community that impunity for the crimes committed by the Khmer Rouge regime would not be countenanced. The conclusion of the case was a landmark moment for the Extraordinary Chambers and demonstrated their capacity to prosecute complex crimes in accordance with international standards. It paved the way for case 002, which concerns the four most senior surviving leaders of Democratic Kampuchea.

B. Case 002: Nuon Chea, Ieng Sary, Khieu Samphan and Ieng Thirith

9. In January 2010, following an investigation that lasted approximately two and a half years, the co-investigating judges notified the parties that the investigations in case 002 had been concluded and invited them to make any final requests for further investigation. While some requests were granted, others were denied, leading to the submission of appeals to the Pre-Trial Chamber. In July, the Pre-Trial Chamber completed the determination of those appeals. The co-investigating judges forwarded case 002 to the co-prosecutors for their final submission. In August, the co-prosecutors filed the final submission with the co-investigating judges, in which they requested that the charged persons should be indicted and sent for trial.

10. On 15 September 2010, the co-investigating judges issued a closing order in which they indicted Nuon Chea, former Chair of the Democratic Kampuchea National Assembly and Deputy Secretary of the Communist Party of Kampuchea, Khieu Samphan, former Head of State of Democratic Kampuchea, Ieng Sary, former Deputy Prime Minister for Foreign Affairs of Democratic Kampuchea, and Ieng Thirith, former Social Action Minister of Democratic Kampuchea, as members of a joint criminal enterprise for crimes against humanity, grave breaches of the Geneva Conventions of 1949 and genocide against the Cham and Vietnamese ethnic groups

within Cambodia, in addition to offences under the 1956 Penal Code of Cambodia. Following the issuance of the closing order, the parties filed several appeals. On 13 January 2011, the Pre-Trial Chamber issued its decisions with regard to the appeals and sent the case for trial.

11. In response to motions from the defence teams in which they claimed that the accused were unfit to stand trial, and in view of their advanced age, in April 2011, the Trial Chamber appointed a geriatrician to assess three of the four accused. Khieu Samphan chose not to be assessed. The experts found Ieng Sary and Nuon Chea fit to stand trial, a finding that went challenged. From 29 to 31 August, preliminary hearings were held to determine whether Ieng Thirith was fit to stand trial.

12. The trial began with an initial hearing, held from 27 to 30 June 2011. The parties requested that 1,054 fact witnesses, experts and civil parties should testify at the trial. During the initial hearing, the Trial Chamber considered lists of witnesses submitted by the parties and preliminary objections concerning its jurisdiction. On 22 September 2011, it decided to sever the trial into a series of separate cases, each addressing a separate section of the indictment. Each case would have a trial followed by a verdict.

13. On 17 November 2011, the Trial Chamber, following the unanimous assessment of five court-appointed medical experts, determined that Ieng Thirith was suffering from a progressive, degenerative cognitive condition that rendered her unfit to stand trial. The Chamber severed the charges against her from the indictment, stayed the proceedings against her and ordered her unconditional release. The co-prosecutors immediately filed both a request to stay the release order and an appeal against the order. On 13 December, the Supreme Court Chamber set aside the decision of the Trial Chamber and ordered it to request, in consultation with experts, additional treatment for Ieng Thirith to render her competent to stand trial. It also ordered the Trial Chamber to reassess her within six months of the start of that additional treatment.

14. On 21 November 2011, the substantive trial of Nuon Chea, Ieng Sary and Khieu Samphan began with the co-prosecutors' opening statements, which covered the entire indictment. Consistent with the Chamber's decision of 22 September 2011 to sever the trial into a series of separate cases, each with a trial and a verdict, however, the first trial will focus on the forced movement of the population from Phnom Penh and later from other regions (phases 1 and 2) and related crimes against humanity. It will also consider the structure of Democratic Kampuchea, the history of the Communist Party of Kampuchea, the organizational structure of Democratic Kampuchea and the roles of the three accused in relation to the policies of the Democratic Kampuchea regime relevant to all charges, which will provide a foundation for the subsequent trials. In its decision, the Chamber stated that it might expand the scope of the first trial, which it subsequently decided to do following a trial management meeting on 17 August 2012.

15. The first trial is proceeding. To date, more than 50,000 visitors, mostly Cambodians, have attended the proceedings. The trial is widely regarded as the most important criminal prosecution under way in the world today.

C. Cases 003 and 004: five suspects whose identities are confidential

16. The crimes under investigation in cases 003 and 004 are crimes against humanity and violations of the 1956 Penal Code of Cambodia. The investigation in the former case also concerns grave breaches of the Geneva Conventions of 1949. The names of the suspects remain confidential. Officials at the most senior levels of the Government of Cambodia have publicly stated their opposition to both cases. The proceedings before the Extraordinary Chambers have been marked by divisions between the international and national co-prosecutors and between the international and national judges.

17. The co-prosecutors opened preliminary investigations into the cases on 10 July 2006. The international co-prosecutor drafted an introductory submission in which he requested the co-investigating judges to investigate the allegations. Since the national co-prosecutor did not agree that the investigations should proceed, the international co-prosecutor recorded a disagreement on 20 November 2008. On 18 August 2009, the Pre-Trial Chamber rendered its considerations on the disagreement, but was divided along national and international lines, with the national judges considering that the investigations should not proceed and the international judges that they should. That division meant that the supermajority required for a decision to be made (four of five judges) was not obtained. In accordance with article 7 (4) of the Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea, the investigation was therefore to proceed, and the international co-prosecutor's introductory submission was transmitted to the co-investigating judges on 7 September 2009.

18. On 9 June 2010, the co-investigating judges made a public statement in which they announced that, on that same date, the international co-investigating judge had recorded a disagreement between the two judges relating to the timing of the investigations. As a result of the disagreement, only the international co-investigating judge would continue to investigate the cases until the end of 2010.

19. The first international co-investigating judge, Marcel Lemonde (France), resigned as from 30 November 2010 and was replaced by the then reserve international co-investigating judge, Siegfried Blunk (Germany), on 1 December. On 29 April 2011, the co-investigating judges issued a public notification in which they stated that the investigations into case 003 had concluded. That notification sparked widespread criticism from international commentators and members of civil society, who said that it was premature and did not respect the rights of victims to participate in the proceedings. The notification was challenged on 20 May 2011 by the international co-prosecutor, who filed three requests for further investigative actions. The requests were rejected by the co-investigating judges on 7 June on the basis of a procedural technicality. Corrected requests were filed on 10 June in conjunction with an appeal in which the international co-prosecutor challenged the technical basis for the original rejection of the requests. The co-investigating judges rejected the corrected requests on 28 July.

20. The international co-prosecutor filed an appeal against the rejections before the Pre-Trial Chamber on 3 August. Mr. Blunk submitted his resignation as an international co-investigating judge on 9 October, while the appeal was pending,

citing reasons connected with perceived interference in the proceedings by the Government. His resignation took effect on 31 October. The then reserve international co-investigating judge, Laurent Kasper-Ansermet (Switzerland), acted as the international co-investigating judge from 14 November, pending his formal appointment by the Cambodian Supreme Council of the Magistracy.

21. On 15 November, the Pre-Trial Chamber failed to reach the required supermajority of four affirmative votes, being split along national and international lines in relation to the appeal. The decision of the co-investigating judges to reject the requests for investigative actions therefore stood. In a joint separate opinion, the international judges of the Pre-Trial Chamber stated that the co-investigating judges could use their discretion to reconsider their decision to conclude the investigations in case 003.

22. During this period, the national co-investigating judge and the national component of the Extraordinary Chambers refused to recognize the authority of Mr. Kasper-Ansermet to act as the international co-investigating judge in the absence of his formal appointment by the Cambodian Supreme Council of the Magistracy. On 19 January 2012, the Cambodian Supreme Council of the Magistracy decided not to appoint Mr. Kasper-Ansermet as the international co-investigating judge. In response to that decision, on 20 January, the Secretary-General issued a statement referring to article 5 (6) of the Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea, which stated that, in case there was a need to fill the post of the international co-investigating judge, the person appointed to fill that post must be the reserve international co-investigating judge. The Secretary-General concluded that the decision not to appoint Mr. Kasper-Ansermet, who was then the reserve international co-investigating judge, was a breach of that provision of the Agreement, and requested that Cambodia should take immediate steps to appoint him. The Cambodian authorities took no such steps. It is a matter of some concern to the United Nations that the national co-investigating judge and the national co-prosecutor are members of the Cambodian Supreme Council of the Magistracy, the body that took the decision not to appoint Mr. Kasper-Ansermet.

23. While acting as the international co-investigating judge, Mr. Kasper-Ansermet faced impediments to the pursuit of the investigations in cases 003 and 004, which he recorded subsequently in a note to the parties dated 21 March 2012. Those included opposition by the national co-investigating judge to all attempts to move the investigations forward and a refusal by the Cambodian staff of the Office of the Co-Investigating Judges to assist him. Having examined the case files, Mr. Kasper-Ansermet determined that the judicial investigation into case 003 had been defective and decided that it should be resumed. The national co-investigating judge refused to discuss the matter with him and Mr. Kasper-Ansermet referred the disagreement to the Pre-Trial Chamber on 15 December 2011.

24. In relation to case 004, Mr. Kasper-Ansermet sought the agreement of the national co-investigating judge to various investigative actions, but the latter did not respond. Consequently, Mr. Kasper-Ansermet also referred that disagreement to the Pre-Trial Chamber on 19 January 2012.

25. On 3 February, both disagreements were returned by the President of the Pre-Trial Chamber, who stated that the disagreements had not been considered by

the Chamber because of Mr. Kasper-Ansermet's lack of authority. The international judges of the Chamber set out their disagreement with the President in a dissenting opinion on 10 February, stating that the Chamber was required to provide a reasoned consideration of the matter. They went on to state that, in the absence of the appointment of an international co-investigating judge, Mr. Kasper-Ansermet, as the reserve international co-investigating judge, had the authority to perform those functions. A subsequent attempt by Mr. Kasper-Ansermet to file the disagreements with the Chamber was again rejected.

26. Mr. Kasper-Ansermet resigned as from 4 May, citing the above-mentioned impediments to the performance of his duties and describing the environment as hostile.

27. On 20 June, the Supreme Council of the Magistracy appointed Mark Harmon (United States of America) as the international co-investigating judge and Olivier Beauvallet (France) as the reserve international co-investigating judge. Mr. Harmon is expected to take up his functions in Phnom Penh late in September.

III. Public information and outreach

28. In paragraph 22 of the Secretary-General's report of 12 October 2004 (A/59/432), public information and outreach is described as an integral part of the work of the Extraordinary Chambers. The Chambers have made extensive efforts to keep the Cambodian people informed about the judicial process. The proceedings and the high public attendance (more than 150,000 people) have been widely and positively reported in the international press. In case 001, weekly press briefings were provided to the national and international media and more than 180 media outlets covered the opening week of the trial. From January to July 2009, journalists paid 742 visits to the Chambers and 417 journalists covered the five days of closing arguments in November. The closing arguments were broadcast live by all the major television and radio stations in Cambodia.

29. There was intense media coverage of the beginning of the trial phase of case 002 on 27 June 2011. Some 140 media representatives covered the opening statements and there were 10,000 visitors over the three days of the proceedings. The Chambers also launched a weekly radio programme, *Khmer Rouge on Trial*, which featured weekly highlights of the trial proceedings in case 002, in addition to a call-in segment that allowed listeners to ask questions and make comments.

30. Other outreach activities included attendance by officials of the Chambers at conferences, educational tours for the public at the premises of the Chambers, the provision of briefings to various organizations and to visiting officials, participation in radio and television programmes and public outreach forums. Civil party forums are held in numerous geographical locations throughout Cambodia to keep civil parties informed about the proceedings and to provide psychological support.

31. The judgement of the Supreme Court Chamber in case 001 afforded an opportunity to highlight the achievements of the Extraordinary Chambers. The courtroom was filled to its capacity of 950 people to witness the historic judgement, while hundreds of thousands of people watched the proceedings live on national television and listened on the radio.

32. At the beginning of the trial in case 002, more than 10,000 people visited the court, which was filled to capacity for each day of the co-prosecutors' opening statements.

IV. Prosecutors and judges

A. Judges

33. The Extraordinary Chambers have 27 judicial posts, including the co-investigating judges, 15 of whom are Cambodian and 12 international.

34. The Pre-Trial Chamber comprises four Cambodian and three international judges, including one Cambodian reserve judge and one international reserve judge. The Cambodian judges are Prak Kimsan (President), Ney Thol, Huot Vuthy and Pen Pichsaly as the reserve. The international judges are Rowan Downing (Australia), Chang-ho Chung (Republic of Korea) and Steven J. Bwana (United Republic of Tanzania) as the reserve.

35. The Trial Chamber has four Cambodian judges and three international judges, including one Cambodian reserve judge and one international reserve judge. The Cambodian judges are Nil Nonn (President), Ya Sokhan, You Ottara and Thou Mony as the reserve. The international judges are Silvia Cartwright (New Zealand), Jean-Marc Lavergne (France) and Claudia Fenz (Austria) as the reserve.

36. There are five Cambodian judges serving in the Supreme Court Chamber: Kong Srim (President), Som Sereyvuth, Mong Monichariya, Ya Narin and Sin Rith as the reserve. While four international judges should serve in the Supreme Court Chamber, at the time of the submission of the present report, only three positions were encumbered, owing to the resignation of one judge. The international judges are Chandra Nihal Jayasinghe (Sri Lanka), Agnieszka Klonowiecka-Milart (Poland) and Florence Ndepele Mwachande Mumba (Zambia) as the reserve. On 2 July 2012, the President of the Supreme Court Chamber designated Ms. Mumba to sit in place of Motoo Noguchi (Japan), who resigned as from 15 July, and to replace him in all future proceedings pending the formal appointment of a new international judge by the Supreme Council of the Magistracy.

37. The Cambodian and international co-investigating judges are You Bunleng and Mark Harmon (United States), respectively, and the reserves are Thong Ol and Olivier Beauvallet (France).

B. Co-prosecutors

38. The co-prosecutors of the Extraordinary Chambers are Chea Lang (Cambodia) and Andrew Cayley (United Kingdom of Great Britain and Northern Ireland). The reserve co-prosecutors are Chuon Sun Leng (Cambodia) and Nicholas Koumjian (United States).

V. Office of Administration

39. The Office of Administration supports the substantive offices of the Extraordinary Chambers: the Office of the Co-Prosecutors, the Office of the Co-investigating Judges and the Judicial Chambers. It comprises the Office of the Director, the Public Affairs Section, the Court Management Section, the Budget and Finance Section, the Personnel Section, the Information and Communications Technology Section, the General Services Section and the Security and Safety Section.

40. The Office of Administration is a hybrid system, with separate and distinct administrative rules and regulations covering the national Cambodian component and the international United Nations component. The Acting Director of the Office reports to the Government of Cambodia, while the Deputy Director reports to the United Nations. They collaboratively manage the diverse sections under their authority.

41. Since the previous report of the Secretary-General (A/62/304), significant achievements have been made in enabling the Extraordinary Chambers to conduct large trials involving interpretation and transcription in the three working languages (English, French and Khmer), state-of-the-art audiovisual aids and translation of thousands of pages of documentary evidence. The Court Management Section acts as a central support unit in the coordination of proceedings. It is the official records repository of the Extraordinary Chambers and the processing point for all electronic and hard-copy filings, case files, audiovisual records and evidence. It also coordinates the preparation and management of courtroom proceedings, provides interpretation, translation and transcription services, is responsible for liaison with the detention facility, provides witness and expert support and manages audiovisual operations.

42. Physical improvements have been made to the detention facility, in particular to the cells, in order to improve overall standards in the light of the advanced age of the detainees. In addition, three chairlifts have been installed so that the detainees can enter and leave the courtroom.

VI. Other institutional arrangements

A. Independent Counsellor

43. Allegations of corruption at the Extraordinary Chambers surfaced in 2007 and 2008. They concerned an institutionalized kickback scheme on the Cambodian side of the administration of the Extraordinary Chambers, whereby Cambodian staff were allegedly asked to pay a portion of their salaries to senior officials. Inquiries by the Special Expert of the Secretary-General early in 2008 revealed sufficient substantiation of the allegations for the United Nations to decide that urgent action was needed. The issue was addressed at a senior level with the Government of Cambodia, in particular through negotiations for an effective anti-corruption mechanism at the Extraordinary Chambers, in addition to the existing structure of national and international ethics monitors.

44. While the United Nations initially argued for a formal written complaints procedure, concerns about confidentiality and fears of retaliation against complainants led to a less formal mechanism that was based on the availability to staff of an independent and trusted figure to whom they could take their concerns orally and confidentially. The negotiations culminated in the conclusion of an agreement to establish an independent counsellor in August 2009, and the subsequent appointment of Uth Chhorn, Auditor General of Cambodia, as the Independent Counsellor. He is responsible for treating all matters brought to him confidentially and for ensuring that there is no retaliation against staff for good-faith reporting of wrongdoing. He issues an annual report to the Government of Cambodia and the United Nations, while maintaining the confidentiality of individual complaints.

45. Should concerns arise that the Independent Counsellor deems appropriate to raise to the political level, he can bring them to the attention of the Deputy Prime Minister of Cambodia and the Assistant Secretary-General for Legal Affairs. It would then fall to those officials to resolve the matter through consultations. No such referrals have taken place to date.

B. Special Expert

46. In early 2008, in the light of concerns about the budget proposal of the Extraordinary Chambers, in addition to the need to strengthen the management and administration of the international component of the Chambers, the Secretary-General designated a special expert to advise on the United Nations Assistance to the Khmer Rouge Trials (UNAKRT) and, in particular, to assist in formulating the 2008 and 2009 proposed budget around an indicative schedule and anticipated timelines.

47. The role of the Special Expert has since evolved to encompass the following responsibilities: developing strategies to ensure adequate financing until the completion of the work of the Extraordinary Chambers, including through fundraising efforts; having regular high-level contact with the Government of Cambodia, as necessary, to maintain an open dialogue on issues of concern; monitoring the effectiveness of the Independent Counsellor function; assisting UNAKRT to tackle governance challenges in the structure of the Chambers; and assisting UNAKRT, in consultation with all relevant parties, in taking forward a completion process for the Chambers. The Special Expert visits Phnom Penh regularly and works closely with the Department for Economic and Social Affairs, the Office of the Controller and the Office of Legal Affairs. David Scheffer, the former United States Ambassador-at-Large for War Crimes Issues, was designated as the Special Expert in January 2012.

VII. Challenges

48. As anticipated by the Secretary-General in his report of 31 March 2003 (A/57/769), the Extraordinary Chambers have faced fundamental challenges. Tackling these challenges effectively has proved to be problematic given the decision-making structure within the Chambers and the oversight arrangements. Unlike the other United Nations and United Nations-assisted tribunals, the

international judges of the Chambers do not comprise a majority in any Chamber and there is neither a president nor a registrar. There is also no equivalent of the close oversight and decision-making exercised by the management committees of the other voluntarily funded tribunals. Given that the Chambers are part of the national court structure of Cambodia, and that the United Nations plays an assistance role through UNAKRT, the Secretariat has no managerial or administrative authority over the entire court. The United Nations has had to address the challenges set out herein even without decisive judicial, managerial and administrative authority.

A. Oversight

49. In 2008, following a recommendation by the Board of Auditors and a proposal from a group of interested Member States, a steering committee for UNAKRT was established in New York to monitor the progress of the Extraordinary Chambers and to provide guidance on non-judicial court-related matters. It comprises representatives of the permanent missions to the United Nations of six of the principal donors (Australia, France, Germany, Japan, the United Kingdom and the United States) and Cambodia. The Controller and representatives of the Office of Legal Affairs and the Department of Economic and Social Affairs advise and support the steering committee, which meets once or twice per year. Its main responsibilities are to review the implementation of the workplan of the Chambers, monitor progress and provide strategic guidance when required; review budgetary requirements before submission to the group of interested States; brief the group on outcomes of the steering committee meetings; and assist the Chambers in their fundraising initiatives and advocacy efforts. A subset of the steering committee consisting only of the donors, otherwise known as the principal donors group, meets more frequently, but informally, to discuss budget and administrative matters and emerging operational issues on which the Secretary-General requires donor views and feedback.

50. The group of interested States is the wider group of States that provides financial support to the Extraordinary Chambers, contributing to their international or national components. In Phnom Penh, a broader group of donor States and the European Union meets as the "Friends of the Extraordinary Chambers". Japan and France act as the chairs of the meetings on a rotational basis. The Director of Administration of the Chambers and the Coordinator of UNAKRT are ex officio members. The meetings generally take place twice a year to discuss the progress made by the Chambers and funding challenges. The friends also meet during visits of the Special Expert to be briefed on emerging issues relating to the activities of the Chambers, in particular the progress in the various cases. In 2012, the Special Expert's interventions with the friends centred on the dire funding situation of the Chambers and the possible consequences should funding for the United Nations international component be exhausted.

51. Unlike the management committees of the other voluntarily funded United Nations-assisted tribunals, the steering committee has no decision-making authority. Rather, its meetings and those of the principal donors group act primarily as forums for discussion and to provide guidance and input into the Secretariat's decision-making processes.

B. Governance structure

52. The lack of a strong decision-making structure within the Extraordinary Chambers has compounded the difficulties in managing them. Each Chamber has a national judge as its President. The absence of an overall president who represents the Court as a whole, with broad decision-making authority over both the national and international components, and of a registrar, with overall administrative and budgetary authority, undermines the coherent management of the judicial and administrative organization of the Chambers. There have been unresolved disparate views from within the Chambers, for example, on the question of whether the Supreme Court Chamber should sit full-time or part-time.

53. The Extraordinary Chambers therefore do not benefit from the same internal governance structure that exists in other United Nations and United Nations-assisted tribunals. Each of those tribunals has an internal coordination committee, through which the President, the Prosecutor and the Registrar discuss managerial, administrative and budgetary matters, so as to give guidance and direction, both within the tribunal, and, as appropriate, to United Nations Headquarters and the relevant management committee. While a similar process was attempted in the case of the Extraordinary Chambers within the international component of the United Nations, calling for coordination meetings of the Deputy Director, the international co-prosecutor and one Trial Chamber official, the meetings were discontinued owing to concerns raised by the defence teams.

C. Allegations of political interference

54. Public statements of opposition at the most senior levels of the Government of Cambodia with regard to cases 003 and 004, in addition to the numerous difficulties faced in making progress in the investigation of the two cases, have led to allegations of political interference in the judicial process and lack of cooperation by the Cambodian component of the Extraordinary Chambers.

55. Continuing concerns on the part of the General Assembly about the rule of law and the functioning of the judiciary in Cambodia resulting from interference by the executive were raised in the 2003 report of the Secretary-General (A/57/769). The Secretary-General advised that the most effective way to address that problem would be to provide for a majority of international judges, both in the Trial Chamber and the Appeal Chamber, but that advice was not heeded by the General Assembly or by the principal donors in the face of strong opposition from the Cambodian authorities. Consequently, the co-prosecutors, the co-investigating judges and the Pre-Trial Chamber have faced difficulties in moving cases 003 and 004 forward. The judicial decision-making process within the Chambers has not, in practice, enabled an effective and straightforward resolution of differences of approach between the national and international judges. The Secretariat has found it necessary, from time to time, to appeal for full cooperation and to make representations at a senior level to the Government of Cambodia to refrain from making public statements of opposition to cases 003 and 004.

D. Funding

56. In paragraph 74 of his report of 2003 (A/57/769), the Secretary-General advised that an operation of the nature of the Extraordinary Chambers, mandated by Member States, would constitute an expense of the Organization under Article 17 of the Charter of the United Nations and should be financed from assessed contributions, given that a financial mechanism based on voluntary contributions would not provide the assured and continuous source of funding that would be needed. He further stated that the operation of a court should not be left to the vagaries of voluntary contributions. Nevertheless, in its resolution 57/228 B, the General Assembly decided that the expenses of the Extraordinary Chambers to be defrayed by the United Nations should be borne by voluntary contributions from the international community. The international component of the Chambers is now facing an acute financial shortfall that could jeopardize future operations.

57. At the time of their establishment, it was estimated that the Extraordinary Chambers would complete their work within three years from the time at which the Office of the Co-Prosecutors began operations. That initial timeline was underestimated. The complex dimensions of running a trilingual hybrid court, coupled with the numerous challenges noted above, have resulted in a revised timeline that shows that the activities of the Chambers will continue beyond 2015. With the work on cases 003 and 004 resuming, it remains premature to determine with any certainty a definitive end date. As such, it is also impossible to determine the total financial support needed to complete the overall programme of work of the Chambers.

58. At the request of the group of interested States, a biennial budgeting cycle was instituted with effect from the biennium 2008-2009, with the aim of better defining and monitoring the programme of work of the Extraordinary Chambers and to facilitate fundraising efforts. The expenditures incurred by the Chambers from their inception in 2005 until 31 December 2011 total $141 million, of which $107.9 million was incurred by the United Nations international component and $33.1 million by the Cambodian national component (see annex I to the present report).

59. The expenditures of the international component were fully met from voluntary contributions by the donor community, with the amount of $116.08 million contributed as at 31 December 2011. The expenditures of the national component were met through contributions from the Government of Cambodia and the donor community, in the amount of $32.9 million as at 31 December 2011.

60. On 1 March 2012, the chair of the steering committee announced the formal endorsement of the budget for the biennium 2012-2013 in the total amount of $84.8 million, divided into $64.8 million, exclusive of contingency, for the international component and $20.0 million for the national component.

61. For the first time since the establishment of the Extraordinary Chambers, insufficient funds have been provided and pledges made to cover the endorsed budget. While intensive fundraising efforts by the Special Expert have resulted in a limited number of new commitments, these will be insufficient to meet the financial requirements of the international component. At the time of submission of the present report, the international component had received $17.5 million, against projected expenditures in 2012 of $25.0 million, and 93 per cent of the budget for 2013 was unfunded. Unless new funding is received in September 2012, the United

Nations will have insufficient funds to pay United Nations judges and staff and to meet other commitments under the Agreement in October. In such circumstances, the United Nations can neither predict nor control the consequences for the Chambers and the judicial proceedings before them. This is an unprecedented situation that places the United Nations in a precarious situation, without guidance from Member States on measures that should be implemented if sufficient funding is not secured.

62. The lack of funding has already harmed the ability of UNAKRT to appoint new staff and to extend the contracts of existing staff. Late in 2011, and in 2012, contract extensions were issued on a monthly basis, placing staff in an unfavourable situation. In addition, a recruitment freeze was instituted in July 2012, given that the Organization was without the means to enter into and meet additional commitments. The low morale of staff, including judicial officials, is adversely affecting the effective functioning of the Extraordinary Chambers and the uncertainties regarding financial stability are adding to the already difficult challenges set out above. A recent mission to UNAKRT by the Staff Counsellor's Office confirmed that the continuing financial constraints that affected staff contracts and extensions were a factor within the Chambers that was detrimental to the mental health and psychological well-being of the staff. It also independently confirmed the increasingly low morale of UNAKRT staff, who showed continuing signs of tension and anxiety.

63. At the time of submission of the present report, the Extraordinary Chambers were preparing a revised budget estimate for the biennium 2012-2013, in line with the recommendations of the principal donors group to scale back and institute austerity measures. The revised estimates are expected to reduce the annual requirements for the international component from $32.0 million to $26.6 million. While the Chambers are taking remedial measures to minimize costs in line with donors' suggestions, it remains unclear whether these measures will result in donors' meeting their commitment to fund the 2013 budget fully.

64. As noted earlier, in his report (A/57/769), the Secretary-General recommended funding through assessed contributions, given that a financial mechanism based on voluntary contributions would not provide the assured and continuous source of funding that would be needed to provide a secure basis for the conduct of investigations, prosecutions and trials. He had previously highlighted, in relation to the establishment of the Special Court for Sierra Leone (S/2000/915), that it was anomalous that the parties that entered into an agreement to establish a court on the basis of voluntary funding (the United Nations and the State concerned) were, in practice, dependent for the implementation of their treaty obligations on States that were not parties to the agreement. This is the anomalous position in which the United Nations now finds itself.

65. The General Assembly, in its resolution 57/228 B, mandated the Secretary-General to conclude the Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea. By doing so, the United Nations entered into obligations under international law to finance various aspects of the Extraordinary Chambers, including the salaries of the international judges, the international co-prosecutor and the international staff, the remuneration of defence counsel, the costs of witnesses' travel to the Chambers and the costs of

the utilities and services required by the Chambers. The ability of the United Nations to meet these obligations depends entirely on there being sufficient voluntary contributions from States. In the absence of such contributions, the United Nations can neither predict nor control the consequences for the Chambers and the judicial proceedings before them.

VIII. Conclusions

66. The Secretary-General welcomes the significant progress made by the Extraordinary Chambers since his previous report, in 2007, but, as set out above, notes that there have been serious challenges during the reporting period, and that the international component is facing an acute funding shortfall that could jeopardize the future operations of the Chambers.

67. The completion of the trial and appeal proceedings in case 001 was an historic success for the Chambers and demonstrated their capacity to conduct complex judicial proceedings in accordance with international standards. This success continues with the trial proceedings in case 002.

68. Serious allegations about corruption on the Cambodian side of the administration of the Chambers were dealt with through the conclusion of an agreement on an independent counsellor in 2009. Challenges posed by public statements by senior members of the Government of Cambodia, and allegations of lack of cooperation by the Cambodian component of the Chambers in the investigation in cases 003 and 004, have required significant time and attention on the part of senior officials of the United Nations and will need to be dealt with in order for the success of the Chambers to continue. The imminent arrival of the new international co-investigating judge presents a fresh opportunity for renewed cooperation and genuine progress in the investigation of these cases.

69. In the current world economic crisis, raising funds for the Chambers continues to pose a serious challenge and the acute financial shortfall on the international side of the Chambers raises sustainability concerns. The uncertainty regarding the financial stability of the international component imperils the future operations of the Chambers. Should funds prove insufficient for the United Nations to meet its obligations under the Agreement, it is impossible to predict or control the consequences for the Chambers and the judicial proceedings before them. The financial situation has resulted in public and media attention shifting away from the achievements of the Chambers to issues of financial stability and internal morale.

70. Urgent and substantial financial contributions are required if the future operations of the Chambers are to be assured and the unpredictable consequences of a lack of funds avoided. To put the judicial proceedings before the Chambers in jeopardy for lack of funds would run counter to the message of "no impunity" that the Secretary-General has consistently underlined and that has been progressively strengthened through nearly two decades of United Nations and United Nations-assisted criminal tribunals.

IX. Action to be taken by the General Assembly

71. The General Assembly may wish to take note of the present report, in particular the acute financial shortfall on the international side of the Extraordinary Chambers, which could jeopardize the judicial proceedings before the Chambers, and urgently consider how to enable the United Nations to continue providing essential substantive and logistical support to the Chambers.

Annex

Financial status of the Extraordinary Chambers in the Courts of Cambodia

International component: United Nations Assistance to the Khmer Rouge Trials

Financial status of the Chambers as at 31 December 2011

(United States dollars)

A. Income	
Contributions received from 2005 to 2011	111 215 335
Interest earned from 2005 to 2011	4 867 870
Subtotal	**116 083 205**
B. Expenditure	107 871 036
Fund balance	**8 212 169**[a]

[a] Inclusive of a contingency reserve of $4,198,722.

Financial status of the Chambers as at 31 July 2012

(United States dollars)

A. Income	
Cash balance brought forward as at 1 January 2012	8 212 169
Contributions received from 1 January to 31 July 2012	9 326 539
Subtotal	**17 538 708**
B. Expenditure	14 897 804
Cash balance	**2 640 904**
C. Estimated expenditure from August to December 2012	10 113 807
Projected shortfall	**(7 472 903)**
D. Outstanding pledges for 2012	2 469 045[b]
Projected shortfall as at 31 December 2012	**(5 003 858)**
E. Estimated requirements for 2013	28 237 600[c]
F. Outstanding pledges for 2013	2 055 800
Estimated shortfall for 2013	**(26 181 800)**

[b] Pledges have been made by Australia (1,469,045 in local currency revalued as at 23 August 2012) and Norway (1 million in local currency revalued as at 23 August 2012).

[c] Based on revised projected estimates.

United Nations Assistance to the Khmer Rouge Trials: current and projected expenditure for 2012[d]

(United States dollars)

Description	*2012 approved budget*	*January-July expenditure*	*August-December estimated expenditure*	*Total expenditure*	*Implementation (percentage)*	*Remaining budget*
Posts	19 886 161	9 195 918	6 919 854	16 115 772	81	3 770 389
Non-staff compensation	2 057 004	1 193 550	935 622	2 129 172	104	(72 168)
Other staff costs	193 156	102 023	55 349	157 372	81	35 784
Consultants and experts	1 788 669	755 528	412 706	1 168 234	65	620 435
Witness costs	119 990	19 764	16 020	35 784	30	84 206
Travel	177 908	42 768	49 757	92 525	52	85 383
Contractual services	1 505 425	1 047 740	199 026	1 246 766	83	258 659
Defence support section	4 757 313	1 625 456	1 067 220	2 692 676	57	2 064 637
Civil party co-lead lawyer section	414 090	287 205	126 885	414 090	100	–
Judicial meetings	159 102	33 470	33 470	66 940	42	92 162
Training	29 272	5 854	5 904	11 758	40	17 514
General operating expenses	802 122	382 840	185 170	568 010	71	234 112
Supplies	397 457	152 350	40 878	193 228	49	204 229
Furniture and equipment	663 270	53 336	65 948	119 284	18	543 986
Total	**32 950 939**	**14 897 804**	**10 113 807**	**25 011 611**	**76**	**7 939 328**

[d] Inclusive of programme support costs and exclusive of contingency.

United Nations Assistance to the Khmer Rouge Trials: budget implementation and projected expenditure for the period 2005-2013

(Thousands of United States dollars)

Component	*Budget 2005-2007*	*Expenditure 2005-2006*	*Expenditure 2007*	*Implementation rate (percentage)*	*Budget*		*Expenditure 2008*	*Expenditure 2009*	*Implementation rate (percentage)*
					2008	*2009*			
Judicial Office	9 453	1 258	3 209	47	7 677	8 287	5 027	6 029	69
Defence and victims support	6 017	203	757	16	3 514	3 085	2 546	2 318	74
Office of Administration	27 580	6 016	7 840	50	18 807	18 015	12 960	13 992	73
Total	**43 049**	**7 476**	**11 805**	**45**	**29 997**	**29 387**	**20 534**	**22 338**	**72**

Component	*Budget[e]*		*Expenditure 2010*	*Expenditure 2011*	*Implementation rate (percentage)*	*Budget[f]*		*Estimated expenditures 2012*	*Implementation rate (percentage)*
	2010	*2011*				*2012*	*2013*		
Judicial Office	7 043	9 241	6 829	6 594	82	9 191	7 478	7 196	78
Defence and victims support	2 021	4 660	1 998	2 653	70	6 257	7 110	3 680	59
Office of Administration	14 297	16 933	13 978	13 666	89	17 503	17 254	14 135	81
Total	**23 360**	**30 835**	**22 805**	**22 913**	**84**	**32 951**	**31 841**	**25 012**	**76**

[e] Revised budget estimates.

[f] Revised budget estimates currently under preparation.

National component: Cambodia

Financial status of the Chambers as at 31 December 2011

(United States dollars)

A. Income: contributions received from 2005 to 2011	32 890 646
B. Expenditure	33 149 284
Fund balance	**(258 638)**

Financial status of the Chambers as at 31 July 2012

(United States dollars)

A. Income	
Cash balance brought forward as at 1 January 2012	(258 638)
Contributions received from 1 January to 31 July 2012	7 717 711
Exceeds transfer from Government of Cambodia for 2013	(550 000)
Subtotal	**6 909 073**
B. Expenditure	5 223 532
Cash balance	**1 685 541**
C. Estimated expenditure from August to December 2012	4 243 844
Projected shortfall	**(2 558 303)**
D. Outstanding pledges for 2012	596 504[g]
Projected shortfall as at 31 December 2012	**(1 961 799)**
E. Estimated requirements for 2013	9 451 500[h]
F. Outstanding pledges for 2013	2 559 812[i]
Estimated shortfall for 2013	**(6 891 688)**

[g] Pledges have been made by Germany ($288,973), Japan ($307,531) and the European Union. The agreement for the European Union pledge of 1.3 million euros has not yet been signed. The funds are allocated for both 2012 and 2013. The exact funding amount allocated for each year is not yet known.

[h] Based on revised projected estimates.

[i] Of the pledged amount of $1.8 million for 2013, $550,000 has already been transferred.

National: current and projected expenditure for 2012 [1]

(United States dollars)

Description	*2012 approved budget*	*January-July expenditure*	*August-December estimated expenditure*	*Total expenditure*	*Implementation (percentage)*	*Remaining budget*
Posts	5 787 725	2 959 980	2 455 979	5 415 959	94	371 766
Non-staff compensation	993 174	552 476	412 614	965 090	97	28 084
Judicial meeting	30 764	–	16 221	16 221	53	14 543
Resident judge	129 822	71 908	54 225	126 133	97	3 689
Other staff costs	279 912	100 012	179 900	279 912	100	–
Premises alteration	115 100	64 452	50 648	115 100	100	–
Contractual services	1 276 976	908 827	368 149	1 276 976	100	–
Travel	149 515	31 484	81 328	112 812	75	36 703
Training and meeting costs	221 621	156 129	11 468	167 597	76	54 024
Operating expenses	526 584	326 547	200 037	526 584	100	–
Hospitality	38 100	23 790	14 310	38 100	100	–
Consultant and expert	200 016	27 927	172 089	200 016	100	–
Subtotal	**9 749 309**	**5 223 532**	**4 016 968**	**9 240 500**	**95**	**508 809**
Legacy/residual component	492 490	–	226 876	226 876	46	265 614
Total	**10 241 799**	**5 223 532**	**4 243 844**	**9 467 376**	**92**	**774 423**

[1] Inclusive of programme support costs and exclusive of contingency.

National: budget implementation and projected expenditure for the period 2006-2013

(Thousands of United States dollars)

Component	*Budget 2006-2007*	*Expenditure 2006*	*Expenditure 2007*	*Implementation rate (percentage)*	*Budget*		*Expenditure 2008*	*Expenditure 2009*	*Implementation rate (percentage)*
					2008	*2009*			
Judicial Office	2 425	260	906	48	1 727	1 910	1 431	1 753	87
Defence and victims support	353	4	4	2	172	312	58	178	49
Office of Administration	10 477	1 423	2 781	40	4 417	4 761	3 376	3 997	80
Total	**13 256**	**1 687**	**3 691**	**41**	**6 317**	**6 984**	**4 864**	**5 928**	**81**

Component	*Budget*[a]		*Expenditure 2010*	*Expenditure 2011*	*Implementation rate (percentage)*	*Budget*[b]		*Estimated expenditure 2012*	*Implementation rate (percentage)*
	2010	*2011*				*2012*	*2013*		
Judicial Office	1 966	2 484	1 966	2 367	95	2 291	1 861	2 144	94
Defence and victims support	500	708	500	599	85	881	467	831	94
Office of Administration	5 441	6 666	5 441	6 105	92	6 577	6 992	6 265	95
Subtotal	**7 907**	**9 858**	**7 907**	**9 072**	**92**	**9 749**	**9 320**	**9 241**	**95**
Legacy/residual component	–	–	–	–	–	493	413	227	46
Total	**7 907**	**9 858**	**7 907**	**9 072**	**92**	**10 242**	**9 733**	**9 467**	**92**

[a] Revised budget requirements.

[b] Revised budget currently under preparation.

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Financial reports and audited financial statements, and reports of the Board of Auditors

Financial reports and audited financial statements and reports of the Board of Auditors for the period ended 31 December 2011

Report of the Advisory Committee on Administrative and Budgetary Questions

I. Introduction

1. In accordance with regulation 7.12 of the Financial Regulations and Rules of the United Nations (ST/SGB/2003/7 and Amend.1), the Advisory Committee on Administrative and Budgetary Questions received copies, some in advance form, of the financial reports, audited financial statements and reports of the Board of Auditors for the biennium ended 31 December 2011 to the General Assembly for 17 entities of the United Nations system. In addition, the Committee had before it an advance version of the concise summary of the principal findings and conclusions contained in the reports submitted by the Board to the Assembly at its sixty-seventh session (A/67/173), as well as the report of the Secretary-General on the implementation of the recommendations of the Board on the accounts of the United Nations, the United Nations funds and programmes and the international tribunals for Rwanda and the former Yugoslavia for the financial period ended 31 December 2011 (A/67/319 and Add.1).

2. During its consideration of the reports, the Advisory Committee met with the members of the Audit Operations Committee of the Board of Auditors, who provided additional information and clarification. The Advisory Committee also met with representatives of the Secretary-General to discuss the status of implementation of recommendations of the Board.

3. The Advisory Committee was informed that the Board had used approximately 3,587 auditor-weeks during the audit cycle for the biennium 2010-2011, excluding the Board's peacekeeping audits. During the audit period, the Board issued 129 management letters to organizations on matters relating to programme and financial management. Some of the significant comments contained in those management

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letters are reflected in the Board's reports to the General Assembly. In certain cases, the reports of the Board summarize the Administration's replies to its recommendations and observations, as well as additional information on measures taken and/or being taken to implement recommendations. The Advisory Committee notes that entities have generally concurred with the Board's recommendations and have proceeded to implement them. In instances in which they have not agreed with the recommendations or have indicated that they are unable to begin implementation, some entities have provided explanation.

4. The Board issued unmodified opinions for 15 entities (the United Nations, the International Trade Centre, the United Nations University (UNU), the United Nations Development Programme (UNDP), the United Nations Children's Fund (UNICEF), the United Nations Institute for Training and Research (UNITAR), the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Environment Programme (UNEP), the United Nations Population Fund (UNFPA), the United Nations Human Settlements Programme (UN-Habitat), the United Nations Office on Drugs and Crime, the United Nations Office for Project Services (UNOPS), the International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia and the United Nations Joint Staff Pension Fund. With respect to the two remaining entities, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), the former received an unmodified opinion with an "other matter" paragraph and the latter received a modified audit opinion with emphases of matter (see paras. 50 and 51 below). No entities received a qualified audit opinion.

5. The Advisory Committee notes that the total number of modified opinions for the financial period ended 31 December 2011 declined significantly compared with the 2008-2009 period, when modified audit reports with various emphases of matter were issued for seven entities and a qualified audit opinion was issued for UNFPA. In its concise summary, the Board of Auditors reported that the reduction in the quantity of modified opinions reflected a revision of the International Standards on Auditing intended to provide greater clarity on emphases of matter and requiring stricter application criteria. Meaningful comparisons between the two periods could not therefore be made. The Board acknowledged, however, that improvements on the part of the Administration had been made, particularly in the area of managing and reporting non-expendable property, reflecting the preparations required for the implementation of the International Public Sector Accounting Standards (IPSAS) (A/67/173, para. 3 (b)).

6. The table below summarizes the opinions issued by the Board on the financial statements of each entity for the financial period ended 31 December 2011:

Organization	*Audit opinion*
1. United Nations (A/67/5 (Vol. I))	Unmodified
2. International Trade Centre (A/67/5 (Vol. III))	Unmodified
3. United Nations University (A/67/5 (Vol. IV))	Unmodified
4. United Nations Development Programme (A/67/5/Add.1)	Unmodified
5. United Nations Children's Fund (A/67/5/Add.2)	Unmodified
6. United Nations Relief and Works Agency for Palestine Refugees in the Near East (A/67/5/Add.3)	Unmodified with one other matter
7. United Nations Institute for Training and Research (A/67/5/Add.4)	Unmodified
8. Office of the United Nations High Commissioner for Refugees (A/67/5/Add.5)	Unmodified
9. United Nations Environment Programme (A/67/5/Add.6)	Unmodified
10. United Nations Population Fund (A/67/5/Add.7)	Unmodified
11. United Nations Human Settlements Programme (A/67/5/Add.8 and Corr.1)	Unmodified
12. United Nations Office on Drugs and Crime (A/67/5/Add.9)	Unmodified
13. United Nations Office for Project Services (A/67/5/Add.10)	Unmodified
14. International Criminal Tribunal for Rwanda (A/67/5/Add.11)	Unmodified
15. International Tribunal for the Former Yugoslavia (A/67/5/Add.12)	Unmodified
16. United Nations Joint Staff Pension Fund[a] (A/67/9)	Unmodified
17. United Nations Entity for Gender Equality and the Empowerment of Women[b] (A/67/5/Add.13)	Modified with emphasis of matter and one other matter
18. Capital master plan[c] (A/67/5 (Vol. V))	Not applicable
19. United Nations enterprise resource planning system[c] (A/67/164)	Not applicable

[a] The audit report on the accounts of the Joint Staff Pension Fund is included in the report of the United Nations Joint Staff Pension Board.

[b] Entity established on 1 January 2011.

[c] The financial statements are consolidated with those of the United Nations.

7. The present report contains the observations and recommendations of the Advisory Committee on the reports of the Board of Auditors on the financial reports and audited financial statements of the United Nations and its funds and programmes for the period ended 31 December 2011. In section II, the Advisory Committee makes general observations and recommendations on the reports of the Board. Section III specifically addresses the Board's findings relating to the activities of the United Nations, and section IV deals with those relating to the United Nations funds and programmes.

8. The Advisory Committee's comments and recommendations on the report of the Board of Auditors on the United Nations Joint Staff Pension Fund for the biennium ended 31 December 2011 (A/67/9, annex X) will be reflected in the context of its forthcoming report on the Fund. Similarly, the Committee will comment on the audit reports on the International Criminal Tribunal for Rwanda (A/67/5/Add.11, chap. II) and the International Tribunal for the Former Yugoslavia (A/67/5/Add.12, chap. II) in the context of its consideration of the performance reports of the tribunals. Concerning the capital master plan (see A/67/5 (Vol. V)), the Committee will comment on the Board's audit findings in the context of the tenth progress report of the Secretary-General on the capital master plan. The Committee will also comment separately on the Board's findings on the implementation of the United Nations enterprise resource planning system (A/67/164) and the implementation of IPSAS (A/67/198) in the context of its consideration of the Secretary-General's reports on those subjects. The audit report on the accounts of the United Nations peacekeeping operations for the financial period from 1 July 2010 to 30 June 2011 (A/67/5 (Vol. II), chap. II) will be considered by the Advisory Committee early in 2013. A list of the audit reports appears in the table above. Furthermore, the Committee will draw upon the Board's observations in the context of its consideration of various subject reports during its current session.

9. Prior to its hearings with the Board of Auditors, the Advisory Committee met with the representatives of UNHCR in the context of the review of its revised biennial programme budget for the period from 2012 to 2013. The Committee's report to the UNHCR Executive Committee contained a number of comments relating to the report of the Board. The Advisory Committee will follow up, as necessary, on the Board's observations and recommendations during its review of the biennial budgets of other United Nations entities for the next fiscal period.

II. General observations and recommendations

10. The Advisory Committee continues to appreciate the work of the Board of Auditors and the continued high quality of its reports, which, in the Committee's view, are well structured and easy to read. The Committee reiterates its appreciation for the concise summary of principal findings and conclusions (A/67/173), which highlights areas of concern across the United Nations and its entities. The Committee also welcomes the Board's submission of topic-specific reports, for example, on the capital master plan, the implementation of the United Nations enterprise resource planning system and the implementation of the International Public Sector Accounting Standards. The Advisory Committee wishes to recall its previous suggestion that the concise summary report of the Board should include paragraph references that cross-reference findings and observations to entity-

specific and thematic reports (A/65/498, para. 8). While the Committee acknowledges that it is up to the Board to determine how it conducts its audits, the Committee believes that it would be valuable if the Board paid particular attention to the risk exposures of the various entities under its purview, irrespective of size or budgetary level.

11. The Board has included an annex in each of its reports showing the status of implementation of the Board's recommendations for the biennium ended 31 December 2009. Upon request, the Advisory Committee was provided with the table below, showing the total number of recommendations made since the biennium 2000-2001, the comparable implementation rates and updated data for the biennium 2010-2011:

Status of implementation of recommendations

Period	*Number of recommendations*	*Fully implemented*	*Percentage*	*Under implementation*	*Percentage*	*Not implemented*[a]	*Percentage*
2000-2001	378	172	45.5	178	47.1	28	7.4
2002-2003	509	235	46.2	230	45.2	44	8.6
2004-2005	651	342	52.5	276	42.4	33	5.1
2006-2007	507	238	46.9	237	46.7	32	6.3
2008-2009	546	377	69.1	129	23.6	40	7.3
2010-2011[b]	338	45	13.3	277	82.0	16	4.7

[a] Includes recommendations that were not implemented because they were overtaken by events and/or not accepted by the Administration.

[b] Data were obtained from the reports of the Secretary-General on the implementation of the recommendations of the Board of Auditors (A/67/319 and Add.1) and do not include information on the United Nations Joint Staff Pension Fund, UNHCR or the capital master plan. The reports relating to UNHCR and the capital master plan are submitted on an annual basis.

12. The table above indicates that progress is being made in the rates of implementation of the Board's audit recommendations. The Advisory Committee notes that the Board has welcomed the progress made in this regard. Nevertheless, the Board has stressed the need for the Administration to establish a dedicated follow-up mechanism to increase accountability for the implementation of recommendations. It has also highlighted the need for management to take greater ownership for implementing recommendations to effectively address the root causes of the problem identified by the Board (A/67/173, para. 79). Upon request, the Committee was provided with background information on several areas with respect to which the Administration did not agree with the Board's recommendation. The Administration also confirmed that the Board's "main", or high-risk, recommendations were prioritized for implementation. **The Advisory Committee believes that the Administration, in the interests of the Organization, must give priority attention to the most serious problems identified by the Board of Auditors. The Committee also underlines the importance of achieving concurrence, to the extent possible, between the Secretary-General and the Board on the latter's recommendations and recommends that, in instances of the divergence of views, greater collaborative efforts be made to find resolutions, including through the jointly developed plans for remedial action.**

13. The Board indicates that it has continued its coordination and collaboration with the internal audit services of the United Nations funds and programmes and with the Office of Internal Oversight Services (OIOS) and, when appropriate, utilized the working papers relating to recent internal audits as a basis for its own audit reviews. **The Advisory Committee appreciates the continued coordination and collaboration of the Board of Auditors with other oversight bodies, including the Office of Internal Oversight Services and internal audit services of the United Nations funds and programmes, as well as the Joint Inspection Unit. The Committee reaffirms that, to the extent that oversight entities can rely on one another's work, this approach facilitates complementarity of the oversight functions of the United Nations and its entities, thus resulting in a more efficient use of resources.**

14. The Advisory Committee recalls that the General Assembly, by its resolution 60/248, established the Independent Audit Advisory Committee to assist it in fulfilling its oversight responsibilities with respect to the United Nations. Subsequently, a number of equivalent bodies have been established in other United Nations entities, including funds and programmes. The Committee notes the continued emergence of audit oversight committee arrangements across a number of United Nations entities. These committees generally serve to provide guidance on oversight arrangements and coverage. During the period under review, the Board of Auditors observed, moreover, that such committees often have a role in challenging and holding the executive to account for managing risks and maintaining effective control (A/67/5 (Vol. I), chap. II, para. 177). The Board noted, however, that the membership and reporting lines for these committees varied somewhat across different entities. For example, at UNRWA, the relevant committee had originally been chaired by the Deputy Commissioner-General, which had had the potential to compromise its independence from the entity's management (A/67/5/Add.3, chap. II, para. 166). Similarly, during its review of a revised biennial programme budget of UNHCR, the Advisory Committee observed that the Independent Audit and Oversight Committee, established by the UNHCR Standing Committee in June 2011, foresaw a dual reporting line, to the High Commissioner and the UNHCR Executive Committee. Upon request, the Board provided the Advisory Committee with a list of generally accepted audit committee principles and identified good practices from the Representatives of Internal Audit Services of the United Nations Organizations and Multilateral Financial Institutions, annexed to the present report, which include the recommendation that such committees be composed entirely of independent external members of the entity, with a direct reporting line to the governing body. **The Advisory Committee therefore recommends that, given the important role that these entities perform, the governing bodies keep the matter of audit oversight committees under close review in order to ensure their independence and objectivity through harmonized reporting lines and equivalent membership across the organizations of the United Nations system.**

15. The Advisory Committee previously noted, in its report on the reports of the Board of Auditors for the financial period 2008-2009, that under IPSAS the United Nations and its entities would produce financial reports on an annual, instead of a biennial, basis (A/65/498, para. 13). This will have an impact on the programmes of work of the Board of Auditors, the General Assembly and the Advisory Committee itself. In the annex to the report of the Advisory Committee on the proposal to clarify and enhance the role of the Board of Auditors in the conduct of performance

audits (A/66/806), the Committee clarified the impact of IPSAS on the reporting requirements of the Board of Auditors. In this context, the Committee was informed that whereas currently the Board produced 28 reports in a biennium reporting year and 9 in a non-biennium reporting year, 8 additional reports would be submitted in 2013 because of the adoption of IPSAS by a number of entities and that, from 2014 onwards, the Board would be submitting a total of 28 reports annually. In addition, the quantity of information and the associated time requirements for the review of these reports in the Advisory Committee and the intergovernmental bodies would increase. In this connection, the Secretary-General, in his report on the proposed revisions to the Financial Regulations of the United Nations for the adoption of IPSAS, noted that the approval of annual audits would have widespread impact, including on the work programmes of the Advisory Committee, the Fifth Committee and the General Assembly (A/67/345, para. 17).

16. **The Advisory Committee believes that the implications of the adoption of IPSAS for the work of the Advisory Committee, the Fifth Committee and the General Assembly require urgent and immediate consideration, given that a number of United Nations entities will be adopting the Standards in 2013. While in the interim the Committee will reflect on the impact of IPSAS reports on its work, it also recommends that the Assembly address this issue as a matter of priority no later than during the main part of the sixty-seventh session.**

17. The Advisory Committee notes the Board's repeated observations and recommendations regarding a number of cross-cutting issues that remain unresolved and the failure by management to address them, which may expose the United Nations and its entities to financial risk and lead to insufficient accountability. For example, observations concerning the inconsistent treatment of end-of-service liabilities persist, despite an explicit IPSAS requirement for their disclosure (see paras. 35 and 36 below). Another area of concern relates to persistent deficiencies in controls over non-expendable property and the need for more rigorous oversight and monitoring (see paras. 43, 44 and 61 below). The adoption of IPSAS requires a profound change in the disclosure of and accounting for such assets and liabilities. **The Advisory Committee recalls paragraphs 10 and 11 of General Assembly resolution 62/223 A, in which the Assembly reiterated its request to the Secretary-General to provide a full explanation for delays in the implementation of the recommendations of the Board of Auditors. The Committee requests the Secretary-General to implement the recommendations of the Board of Auditors in a timely manner.**

18. The Advisory Committee also notes that the level of explanatory detail contained in the Secretary-General's report on the implementation of the Board of Auditors' recommendations (A/66/319 and Corr.1) continues to be limited and does not always allow for a full understanding of the remedial action taken in response to the Board's recommendations. In addition, the Committee notes that some entities disclose useful supplementary detail on the implementation of Board recommendations to their governing bodies. For example, in addition to the brief summary included in the Secretary-General's report to the General Assembly, UNHCR provides more details in a separate report to its Executive Committee. **The Advisory Committee recommends that the Secretary-General provide additional explanatory detail to the General Assembly on actions taken to**

implement the recommendations of the Board of Auditors and/or factors preventing their full implementation.

19. In its concise summary, the Board also made the general observation that the concept of management accounting was not well developed across the United Nations and its funds and programmes (A/67/173, para. 20). Upon request, the Board provided the Advisory Committee with a detailed definition of the concept, explaining that management accounting, as distinct from the prescribed financial reporting requirements produced for intergovernmental consideration, would be primarily for internal use by programme managers. Management accounting reports typically provided programme managers with more timely, forward-looking information for better programme management, more informed decision-making and increased managerial control over resources. The Board indicated in its explanation that the effective use of management accounts presupposed the existence of reliable cost information and a viable reporting functionality. The Board noted that some entities, including UNRWA, UNDP and the United Nations, were committed to the introduction of such a concept. In the case of the United Nations, the capacity for the production of management accounts was being built into the design of its new enterprise resource planning system (Umoja) (A/67/173, para. 20). Upon enquiry, the Committee was informed by the Board that the introduction of management accounting should not increase costs and should be approached in a manner proportionate to the needs of the business. Management accounting information was, according to the Board, straightforward to generate without creating unnecessary overheads. **The Advisory Committee concurs with the observations of the Board of Auditors in this regard.**

III. United Nations

20. The main recommendations of the Board regarding the accounts of the United Nations for the financial period ended 31 December 2011 are summarized in its relevant report (A/67/5 (Vol. I), chap. II, summary). The Board issued an unqualified opinion with regard to the financial statements of the United Nations. In the paragraphs below, the Advisory Committee highlights a number of key issues that the Board raised concerning the United Nations. Some of the observations and recommendations made by the Committee in this section, in particular those on IPSAS and after-service health insurance, also apply to the other organizational entities covered by the Board's audits. Observations and recommendations relating solely to the other organizational entities are set out in section IV.

Major business transformation projects

21. The Board noted in its concise summary report that the United Nations was in the midst of four large-scale business transformation projects (A/67/173, para. 64). For the period under review, the Board reported separately on the progress made on three of the projects: Umoja, IPSAS and the capital master plan (A/67/164, A/67/168 and A/67/5 (Vol. V), respectively). In addition, it made observations on a fourth project, the global field support strategy, in its most recent report on peacekeeping operations (A/66/5 (Vol. II), chap. II, paras. 197-213).

22. As the Board pointed out, all of these projects were crucial drivers in modernizing the Organization. The Board conceded that each would be immensely

challenging, even in a stable and homogenous organization (A/67/5 (Vol. I), chap. II, para. 179). The Board highlighted the need for a realistic and holistic assessment of the ability of the United Nations to absorb these fundamental changes simultaneously, while continuing to deliver its ongoing mandates. It also stressed the need for a coherent and articulated strategic vision for change. Specifically, the Board cited the lack of an end-state vision for each of the projects together with an action plan to realize it (A/67/173, paras. 64-67).

23. Furthermore, the Board noted a lack of complete and transparent reporting on progress, costs and budgets. For example, it indicated that the capital master plan cost overruns reported by the Administration for the period ended in March 2012 totalled $430 million (A/67/5 (Vol. V), para. 15). The Advisory Committee recalls that associated costs were explicitly excluded from the project's original budget pursuant to the recommendations of the Committee and decisions of the General Assembly on the project budget (see resolution 61/251). In the Board's view, the amount of the total project cost should have been highlighted to the Assembly sooner, reflecting a need for more analytical and complete cost forecasting across the life of the project. In addition, the Board indicated that it could not provide adequate assurances that the project's anticipated forecast of final cost was sufficiently robust. It noted that the Office of the Capital Master Plan had been unable to provide evidence to support a $9 million increase in change order costs relating to work in the basement and $2 million in increased professional fees and management costs in individual change orders at the time of the audit. In addition, $30 million in forecasted cost increases were not supported by auditable evidence (A/67/5 (Vol. V), para. 17).

24. With regard to Umoja, the Board expressed similar reservations concerning the validity and accuracy of the cost projections for the project and the exclusion of significant associated costs from the anticipated final project cost (A/67/164, paras. 63-77). The Board also noted that the deferral of certain project functionalities in order to stay within budget might place the achievement of the aims of the project at risk (A/67/164, para. 68).

25. The Advisory Committee also notes the Board's observations regarding the absence of effective internal governance mechanisms for both the capital master plan and Umoja. With respect to the capital master plan, the Board found it unusual that a project of this nature did not have a high-level steering committee (A/67/5 (Vol. V), para. 54). In the case of Umoja, the Board noted that the Steering Committee established to oversee project implementation did not have clearly defined roles and responsibilities, nor did the project have a senior responsible owner with clearly defined authority and lines of responsibility (A/67/164, paras. 93-98). Consequently, the Board concluded that United Nations senior management had not provided the project team with the level of oversight and challenge that would have been expected for projects of this scale and complexity.

26. **The Advisory Committee expects that the Secretary-General will ensure that the lessons emanating from the implementation of major business transformation projects currently under way are incorporated into ongoing and future project initiatives. To this end, the Committee shares the concerns of the Board of Auditors regarding the lack of an end-state vision for each of the projects and the absence of a realistic assessment with respect to the ability of the Organization to absorb fundamental change simultaneously. The**

Committee also regrets the recurrence of serious gaps and lack of robustness in the preparation of cost projections for large-scale projects. It recommends that the Secretary-General submit full cost estimates to the General Assembly, irrespective of the source of funding, for future projects of this magnitude, at the time of their approval, along with a projection of expected benefits. The Advisory Committee also recommends that the Secretary-General manage such projects to limit the possibility of the de-scoping or deferral of key project deliverables as a means to contain cost or time overruns. In order to fully realize the expected benefits of such projects, the Committee stresses, in principle, that the full scope of all projects, as approved by the General Assembly, should be delivered.

27. In addition, the Advisory Committee concurs with the Board's observations regarding the weaknesses of internal governance mechanisms for projects of this nature and recommends that the Secretary-General review such arrangements for all current and future large-scale, transformational projects to ensure that adequate vetting and oversight are in place.

Implementation of the International Public Sector Accounting Standards

28. The Advisory Committee intends to comment further on the implementation of IPSAS in the context of its consideration of the fifth progress report of the Secretary-General on the adoption of the International Public Sector Accounting Standards by the United Nations (A/67/344). At this stage, therefore, the Committee makes comments and observations of a general nature.

29. While the Board noted that significant progress had been made, with implementation on track in seven funds and programmes, it expressed concern that four entities (the Secretariat, the United Nations peacekeeping operations, UN-Women and UNU) were at high risk of not being in a position to produce IPSAS-compliant statements by their target implementation dates. The Board expressed its belief that the focus had been largely on the achievement of the technical and practical delivery of the IPSAS requirements. Entities had not yet developed clearly articulated benefits realization plans so that the advantages of adopting IPSAS could be properly realized, including the provision of improved information for review, analysis and decision-making and better insight into programme performance (A/67/168, paras. 13-20). **The Advisory Committee concurs with the observations made by the Board of Auditors, particularly with respect to the need for extra effort on the part of the entities at risk of not meeting target implementation dates and the recommendation that all entities establish clear benefits realization plans.**

30. Finally, the Board noted that there was a lack of clarity as to whether the International Tribunal for the Former Yugoslavia/International Criminal Tribunal for Rwanda should prepare for IPSAS implementation, in view of the planned closure of the tribunals by the end of 2014. Upon enquiry, the Advisory Committee was informed that the Administration had expressed the view that the preparation of IPSAS-compliant statements for closing entities was a lower-priority task. However, in the case of the tribunals, the Administration stressed that the Residual Mechanism, which is the successor entity to the two tribunals, would benefit from the necessary preparatory work to ensure that the transfer of assets and recording of opening balances for those entities were indeed IPSAS-compliant.

Financial and related matters

31. The Board noted that there had been an overall upward trend in cash holdings and investments across the United Nations and its funds and programmes during the financial period ended 31 December 2011. Cash and investment balances were approximately 5 per cent higher compared with the balances held at the end of the previous biennium (A/67/173, para. 9). The Advisory Committee also notes the relatively high market value of cash and investment balances held by the United Nations Joint Staff Pension Fund as at 31 December 2011, an increase of 3 per cent compared with the previous biennium (A/67/9, chap. II, para. 16). Upon enquiry, while the Board explained that higher levels of cash and investments did not necessarily reflect a negative state of affairs, it expressed concern that the Secretary-General was not able to provide a clear explanation for this trend and had not ensured a commensurate enhancement of internal controls in connection with these elevated cash balances. The Committee was also informed by the Administration that the Organization had limited control over the timing of different funding streams, including the payment of assessed contributions. It was also informed that funds were commonly earmarked or budgeted for specific purposes and could not therefore be redeployed for alternative uses. **Notwithstanding the Administration's explanations, the Advisory Committee concurs with the recommendation of the Board of Auditors that the Administration maintain active oversight over the level of cash which it holds at the entity level, explain the rationale for such holdings and implement reinforced controls to safeguard these balances.**

32. One of the main concerns of the Board related to the weak operation of controls over monies provided to third parties by the Office for the Coordination of Humanitarian Affairs, particularly those intended for active emergency responses, which totalled $233 million for the biennium 2010-2011 (A/67/5 (Vol. I), chap. II, para. 26). According to the Board, the Office could not, at the time of the final audit, substantiate total project expenditures on a timely basis, owing to delays in the submission of final reports confirming how funds had been utilized. However, the Office's provision of unaudited reports to the Board, along with management assurances and other substantiating evidence, made it possible for the Board to issue an unqualified audit opinion. The Board noted, however, that the low levels of site monitoring visits to some country offices reflected another gap in effective project oversight (A/67/5 (Vol. I), chap. II, para. 28). The Advisory Committee notes that these observations are very similar to previous audit concerns relating to nationally executed projects, particularly in the United Nations funds and programmes with extensive activities in the field. The Board, however, has acknowledged that UNFPA and UNHCR improved their performance in this regard during the most recent financial period.

33. **While welcoming the improvements made at the United Nations Population Fund and the Office of the United Nations High Commissioner for Refugees in the management and oversight of their field projects, the Advisory Committee emphasizes the need for effective monitoring and oversight of funds provided to third parties for project implementation organizations of the United Nations system. It recommends that lessons learned from the experiences revealed by the Board across funds and programmes should be applied to all field-based operations.**

34. The Board also noted that there continued to be gaps in disclosure of income and expenditures in the financial statements. For example, the Board considered that the $44 million regular budget contribution to the United Nations Office on Drugs and Crime should be included in that entity's financial statements in accordance with principles set out in the Financial Regulations and Rules of the United Nations (A/67/5/Add.9 and Corr.1, chap. II, para. 14). In the case of the Office for the Coordination of Humanitarian Affairs, the Board raised concerns over the accounting treatment for $233 million expensed to its emergency response fund projects when substantiation confirming how funds had been utilized was lacking. Finally, the Board noted that the funding provided to mandate holders addressing specific country situations or global thematic issues (special procedures), established by the Human Rights Council, was not fully and transparently disclosed in the financial statements of the United Nations (A/67/5 (Vol. I), chap. II, paras. 66-69). Upon enquiry, the Advisory Committee was informed that the primary source of funding for the mandated work of special procedures was the United Nations regular budget. Special procedures mandate holders sometimes received support, generally in kind, outside the parameters of the Office of the United Nations High Commissioner for Human Rights. **The Advisory Committee concurs with the Board of Auditors that there should be full, transparent and accurate disclosure of all funding to the United Nations and its entities, regardless of source.**

After-service health insurance and end-of-service liabilities

35. In accordance with General Assembly resolutions 60/255 and 61/262, the Administration was tasked with changing the presentation of end-of-service and post-retirement liabilities from disclosure in the notes to the financial statements to accounting and presentation on the face of the financial statements. The Advisory Committee's previous report on the reports of the Board of Auditors referred to the Board's observation that there was considerable variance in the disclosure of these liabilities (A/65/498, para. 22). The Board proposed that organizations consider revising disclosure policies for valuation of leave liabilities during their implementation of IPSAS. Furthermore, it noted that most organizations had still not made a decision regarding the funding of these future liabilities (A/65/498, para. 24).

36. In its most recent report, the Board noted that this matter had still not been resolved and that no specific funding plans had been developed in the course of the biennium ended 31 December 2011 (A/67/173, para. 16). The Advisory Committee recalls that for the United Nations Secretariat this issue will be addressed in the context of the report of the Secretary-General on managing after-service health liabilities, requested by the General Assembly in its resolution 64/241, which will now be submitted at its sixty-eighth session. The Committee recalls the concern of the Board that entities might not be in a financial position to fully meet their obligations when end-of-service liabilities actually fall due. **The Advisory Committee agrees that funding streams for the voluntarily funded entities and activities are less predictable and could pose challenges for the development of binding funding arrangements for future end-of-service liabilities.**

Results-based budgeting

37. The Board has again found serious problems in the implementation of results-based budgeting and results-based management. First, it pointed out that the General Assembly's recommendation, contained in its resolution 64/259, that the Secretary-General assign the responsibility for the successful implementation of results-based management methodology throughout the Secretariat to a relevant member of his senior management team had not been implemented during the 2010/11 financial period (A/67/5 (Vol. I), chap. II, para. 156). In terms of specific deficiencies, the Board noted that the United Nations did not effectively align operational workplans with the Organization's strategic goals. Consequently, the Organization's resources might not be allocated to activities that addressed the core strategic aims of the United Nations. The Board also noted that indicators of achievement were not focused on outcomes in any of the cases sampled during its most recent audit (A/67/5 (Vol. I), chap. II, paras. 137-145).

38. In its earlier report on the reports of the Board of Auditors for the period ended 31 December 2009, the Advisory Committee noted that its own comments, as well as those of the Board and of the other oversight bodies, had had little impact on how the results-based-budgeting framework had been presented over the years (A/65/498, para. 27). The Committee recalls that the General Assembly, in its recent resolution 66/257, requested the Secretary-General to continue to take appropriate measures to accelerate the implementation of results-based management. Upon enquiry, the Committee was informed that a task force established by the Secretary-General to develop a conceptual framework for results-based management, having met several times in 2011, had decided to postpone the presentation of the framework pending the finalization of certain change management initiatives under way within the Secretariat. The Committee notes that the opportunity to introduce improvements to results-based budgeting/management for the biennium 2014-2015 is no longer possible, since the strategic framework for that period has been reviewed by the Committee for Programme and Coordination.

39. **The Advisory Committee regrets that the opportunity to introduce an improved approach to results-based budgeting and management in the context of the United Nations strategic framework for 2014-2015 has been missed. With hindsight, the Advisory Committee now questions the purpose and value of the Secretary-General's task force and the resources expended thereon. It stresses that the recommendations of the Board of Auditors to address deficiencies in the implementation of results-based budgeting should be implemented immediately. In addition, the Committee expects that any improvements to the results-based-budgeting/management framework be reflected in the strategic framework for 2016-2017, in advance of the review by the Committee for Programme and Coordination.**

Procurement and contract management

40. The Advisory Committee recalls that considerable effort has been made in recent years to address serious deficiencies in the applicable control framework for United Nations procurement. However, for the biennium ended 31 December 2011, the Board made particular observations concerning contract management, which it defined as the process of managing vendors to deliver goods and services in line with contracted terms (A/67/5 (Vol. I), chap. II, para. 91). It was noted by the Board

that as at 31 December 2011, the United Nations managed 205 active contracts across its headquarters, with a combined value in excess of $2.6 billion. Specifically, the Board noted that United Nations staff required to manage contracts had received limited or no training in these functions. Furthermore, the Board found that only 50 per cent of sample contracts included key performance indicators to measure contractor performance. The Board also noted that evaluations of contractors' performance were routinely left incomplete (A/67/5 (Vol. I), chap. II, para. 102).

41. Upon enquiry, the Advisory Committee was informed that while the Administration saw merit in the recommendations of the Board, it argued that a distinction should be made between contract administration and contract management, and maintained that the principle of segregation of duties that was at the core of the internal control system for procurement should be preserved. The Administration stated that while the contract administration function was carried out exclusively by the Procurement Division, the contract management function, which included day-to-day operational aspects of payment and receipt and inspection, was carried out by requisitioners. The Committee notes that the relevant provisions of the United Nations Procurement Manual, Revision 6, March 2010 (chap. 15), do not set out this distinction in such clear terms.

42. **The Advisory Committee emphasizes that, as past experience has demonstrated, procurement activities carry significant reputational risks to the Organization if not managed in accordance with established rules and procedures, including the stipulated provisions of the Procurement Manual. The Committee is concerned by the position taken by the Administration regarding contract management, which does not correspond to the current provisions of the Procurement Manual. The Committee stresses that this situation could lead to a lack of accountability and transparency in the procurement process. It also stresses that the principle of segregation of duties can be upheld only if there is a full understanding by all parties of their distinct roles and responsibilities. The Advisory Committee expects the Administration to rectify the situation as a matter of priority and to report on actions taken in this regard.**

Non-expendable property

43. The Board noted some overall improvement in the Administration's management and reporting of non-expendable property, owing principally to the ongoing roll-out of IPSAS, under which the accounting modality for assets would be changed (A/67/173, para. 3 (b)). Nevertheless, the Board continued to note discrepancies in accounting for non-expendable property at the United Nations. For example, following the Board's review of the inventory checks carried out by the Administration at Headquarters, it found that $2.7 million worth of non-expendable property could not be located at the time of audit. Similarly, at the United Nations Office at Geneva (UNOG), $3.7 million worth of missing items were noted, along with a $3 million overstatement in the 2010-2011 financial statements. In addition, in the concise summary it was noted that there continued to be a high risk of loss or wastage from unused non-expendable property in peacekeeping operations (A/67/173, paras. 46-47). In the context of its review of land and property for UNOG, the Board also noted that there was a lack of good historical information, particularly concerning the original cost of 10 plots of land owned by UNOG, the

cost of individual buildings on the UNOG sites and the breakdown of assets covered by the $12.3 million historic cost valuation disclosed in the financial statements. The Board concluded that the absence of good information in this regard hindered effective estate management (A/67/5 (Vol. I), chap. II, para. 43).

44. **The Advisory Committee reiterates its concern that improper accounting for non-expendable property has been a recurring theme in external and internal audit reports and requires urgent corrective action, bearing in mind that IPSAS will require more stringent reporting and valuation of such assets. The Committee also highlights the fact that similar deficiencies were observed by the Board in its audits of United Nations funds and programmes (see para. 61 below). It reiterates its recommendation that the Secretary-General take swift action to improve record-keeping and custodial control over non-expendable property and develop timelines for remedial action, along with associated benchmarks (see A/65/498, para. 31).**

Internal oversight arrangements

45. At the request of the Advisory Committee (endorsed by the General Assembly in paragraph 10 of its resolution 66/232 A), the Board assessed and reported on the internal audit arrangements of UNHCR during the financial period (A/67/5/Add.5, chap. II, para. 165). The Board noted the continuing concerns of UNHCR over the level of services currently provided by OIOS but also concluded that UNHCR had not properly considered the full implications of the alternative options for the provision of those services (A/67/5/Add.5, chap. II, paras. 185-188). Upon enquiry, the Advisory Committee was informed that UNHCR management still had the matter under review, including through the establishment of a review team to undertake a cost-benefit analysis of four different options outlined for the provision of the entity's internal audit services. It was anticipated that this work would be completed by the end of 2012. **The Advisory Committee looks forward to reviewing the results of the analysis on possible alternative options for the provision of internal audit services to UNHCR. The Committee believes that before any definitive decision is taken, an authoritative legal basis will be required, in view of the mandated remit of OIOS under resolution 48/218 B.**

46. In its reports on UNU and UNITAR, the Board also raised a number of issues regarding the agreements between those entities and OIOS on the provision of internal audit coverage. In particular, the Board noted that these matters had remained unresolved during the financial period and that no internal audit had been conducted during the period under review (A/67/5 (Vol. IV), chap. II, para. 10, and A/67/5/Add.5, chap. II, para. 9). Upon enquiry, the Advisory Committee was informed that consultations on the different servicing, staffing and financing options to ensure sustained internal audit coverage continued to be inconclusive. **The Advisory Committee believes that continued uncertainty over the internal audit arrangements could lead to a deficiency in internal control at UNU and UNITAR. The Committee is also concerned that the question of the continued provision of coverage by OIOS to United Nations entities, particularly for smaller organizations more susceptible to funding pressures, might reflect issues of a more fundamental nature. The Advisory Committee therefore suggests that in the context of the related concern regarding UNHCR discussed in the previous paragraph, the General Assembly consider the broader issue of the mandate of OIOS as a service provider to different United Nations entities.**

47. In its most recent report, the Board also noted that an OIOS evaluation concerning the structure of its own Investigations Division remained incomplete at the time of the audit (A/67/5 (Vol. I), chap. II, paras. 189-194) and recommended that any proposal be underpinned by a cost-benefit analysis and options appraisal. In addition, the Board emphasized that without a comprehensive assessment of the exposure of the United Nations to the risk of fraud, OIOS would not be able to determine the optimum level and distribution of resources to fulfil its mandated requirements (A/67/5 (Vol. I), chap. II, paras. 206-208). The Advisory Committee recalls that the question of the investigation capacity, structure and resources of OIOS has been under consideration since the fifty-seventh session of the General Assembly in the context of its review of peacekeeping operations (see resolutions 57/318, 61/275, 61/279 and 63/287). More recently, the Committee noted the interim nature of the OIOS pilot project on its centres of investigation (see A/66/779/Add.1) and recommended that OIOS submit a final report in the context of the proposed support account budget for the 2013/14 period. **The Advisory Committee concurs with the views of the Board of Auditors on the link between the potential fraud exposure of the United Nations and the structure and resources of the OIOS Investigations Division, and reiterates its recommendation that OIOS finalize its report to the General Assembly on the final results of the review of its organizational structure.**

Fraud and presumptive fraud

48. In accordance with the Financial Regulations and Rules of the United Nations, the Administration provided the Board of Auditors with a report of cases of fraud and presumptive fraud for the biennium 2010-2011. A total of 9 cases were reported, compared with 21 during the biennium 2008-2009. The cases of fraud and presumptive fraud were valued at $66,385 for 2010-2011 and at $730,049 for 2008-2009.

IV. Funds and programmes

General observations

49. As noted in paragraph 4 above, the Board of Auditors issued 15 unqualified opinions for the United Nations entities, a modified audit opinion for UN-Women and an "other matter" notation for UNRWA. The Board made no qualified audit opinions for the 2010-2011 biennium. **While the Advisory Committee welcomes the unqualified audit opinions now achieved for such entities as UNFPA and the observed improvement in the management and oversight of its nationally executed projects, the Committee also notes the Board's finding that UNOPS continues to show progress in its efforts to address previously identified control weaknesses and deficiencies. The Advisory Committee expects that all entities across the United Nations system will pay attention to issues of concern that could have an impact on the Board of Auditors' opinion with regard to their financial statements.**

50. In respect of UNRWA, the Board issued an unmodified opinion with an "other matter" paragraph reflecting the impact of low funding and cash levels on the entity's internal control (A/67/5/Add.3, chap. I). The Board drew attention to the entity's financial statements, which described an operating deficit of $33.67 million

in its regular unearmarked funds, the very low level of reserves ($3.86 million) and the limited cash position of $35 million as at 31 December 2011. The Board also highlighted the impact of the low levels of funding and cash on the entity's ability to fill vacancies in critical positions and the resulting impact on the effectiveness of its internal controls (A/67/5/Add.3, chap. II). **The Advisory Committee recalls its prior observation concerning the operational conditions under which UNRWA operates (A/65/498, para. 41). It nonetheless concurs with the Board that such circumstances necessitate an increased focus on internal control measures and that there is a need for stronger budget management oversight.**

51. In connection with the newly established UN-Women, the Board issued a modified audit report, referring to matters concerning the formation of the new Entity and the transitional period provided for in General Assembly resolution 64/289. The resolution provided for a transitional period of six months, until 31 December 2010, after which UN-Women would become operational. The Board noted, however, that in 2011 UN-Women was still in the process of establishing its required level of resources. Furthermore, critical staff were not on board until the second half of 2011, and the policies and procedures to support its wider mandate were still being developed, including its financial regulations and rules, which were approved in April 2011 (see A/67/5/Add.13). Consequently, the Entity's internal control system for its operations, projects and programme oversight were not consistently applied throughout the year. The Board also noted that the financial statements for UNIFEM activities from July to December 2010 were annexed to the UN-Women financial statements for 2011, reflecting an inconsistent legal interpretation on the asset transfer arrangements for the four entities combined to form UN-Women (A/67/5/Add.13, chap. II, para. 20). In particular, UNDP took the view that its responsibilities to administer UNIFEM and include activities in its financial statements had been concluded when the Fund had been dissolved in July 2010. In addition, UN-Women was one of the entities with respect to which the Board had identified specific risks as regards IPSAS implementation. **The Advisory Committee is mindful of the constraints encountered during the transitional period for the creation of UN-Women and the challenges involving the establishment of any new entity. The Committee, however, concurs with the Board's recommendations that UN-Women continue its efforts to reinforce its internal control frameworks. In addition, the Committee stresses that a uniform interpretation of the mandates arising from the legislative bodies should be applied in all future instances in which United Nations entities are dissolved and/or consolidated into a new organization to avoid lapses in reporting and accountability.**

Financial and related matters

52. The Board of Auditors continues to issue findings on the financial records of funds and programmes. For example, the Board noted that UNICEF management and administration expenditures were misclassified or understated by $167 million (A/67/5/Add.2, chap. II, paras. 13-14). Upon request, the Advisory Committee was informed that UNICEF Administration had explained that its transparency and presentation of such costs were being improved and that a joint effort with UNDP and UNFPA to decide on a common cost classification for such charges was under way. At UNDP, the Board noted a gap in the verification of $13 million worth of expenditure undertaken through the UNDP national implementation modality

(A/67/5/Add.1, chap. II, para. 64). In the case of UNEP, the Board found that adequate arrangements were not in place to obtain managerial assurance over expenditure incurred by implementing partners under the Multilateral Fund. The Board also noted weaknesses in UNEP oversight of the multilateral environmental agreements (A/67/5/Add.6, chap. II, paras. 23-46). **The Advisory Committee concurs with the Board that the above-noted financial matters should be resolved expeditiously.**

53. In two cases, at UNEP and UN-Habitat, the Board noted that cash management practices at the two entities resulting in exchange rate losses had curtailed the amount of funds available for project implementation (A/67/5/Add.6, chap. II, paras. 60-66, and A/67/5/Add.8 and Corr.1, chap. II, paras. 22-24). Upon enquiry, the Advisory Committee was informed by the representative of the Secretary-General that a broader Organization-wide strategy to mitigate the effects of such losses was under review. It was anticipated that the policy guidance would be finalized by the end of 2012. **The Advisory Committee looks forward to receiving details concerning the proposal to develop a loss-mitigation strategy for exchange rate exposures.**

54. The Advisory Committee notes the continued high level of receivable balances of UNRWA arising from value-added tax (VAT) paid but not refunded by the host Government authorities ($55.9 million as at 31 December 2011), along with the Board's reservations about the recoverability of the long-outstanding portion of the balance ($7.95 million) (A/67/5/Add.3, chap. II, para. 49). The Committee also notes the intention of UNHCR to write off $872,319 of VAT that could not be recovered, since the legal basis of the claim had not been established (A/67/5/Add.5, chap. II, para. 190). **The Advisory Committee recalls that the United Nations and its entities are exempt from the imposition of value-added taxes, in accordance with the standard agreements with host countries. The Committee considers that every effort should be made to ensure that taxes levied and paid are promptly refunded by the host Government authorities.**

Fundraising activities

55. The Board of Auditors continues to make observations concerning the relationship of UNICEF with its National Committees. Given the significance of those Committees' contribution to UNICEF, the Board, as part of its audit for the financial period, reviewed the relationship between UNICEF and the National Committees, the implementation of the related cooperation agreements and the role of UNICEF in the oversight and monitoring of their activities. Specifically, it recommended that UNICEF take a more proactive role in monitoring and overseeing the Committees' fundraising role and noted that the Committees' fund retention rates often exceeded the maximum levels stipulated in the UNICEF model memorandum of understanding (A/67/5/Add.2, chap. II, paras. 88-105). The Advisory Committee recalls its prior recommendation that UNICEF National Committees strictly adhere to the 25 per cent retention limit, unless the limit is changed under its Financial Regulations and Rules (A/65/498, para. 47). Upon enquiry, the Advisory Committee was informed that the UNICEF Administration had agreed to a new cooperation agreement with its National Committees. In addition, the newly approved UNICEF Financial Regulations and Rules foresaw the possibility of variances to the retention rate in exceptional circumstances, as agreed by UNICEF in their joint strategic plans. As at July 2012, 25 such plans had been

finalized. UNICEF had also introduced a list of monitoring improvements in its oversight of the National Committees' fundraising efforts.

56. The Advisory Committee acknowledges the reputational risk that UNICEF may incur owing to the use of its name and brand by the National Committees in individual Member States over which it has limited control. It notes, however, that the Committees are private entities constituted under national law and are subject to the audit and verification requirements of the respective Member States. **The Advisory Committee concurs with the actions taken by UNICEF to strengthen controls over the National Committees through improved cooperation agreements.**

Project implementation

57. In its review of United Nations funds and programmes and specifically the trend towards decentralized project management for activities carried out in the field, the Board observed that better oversight was needed to ensure compliance with the Financial Regulations and Rules. For example, the Board noted that UNDP internal controls were not applied consistently in field offices and that the entity's headquarters should further strengthen the oversight and monitoring of field-level activities (A/67/5/Add.1, chap. II, paras. 95-97). At UNFPA, the Board found a continued lack of clarity regarding the extent of oversight that its regional offices should exert over country offices (A/67/5/Add.7, chap. II, paras. 78-82). The Board also expressed concern over the lack of a central mechanism at UN-Women to manage and oversee its national implementation modality process. In the Board's view, the entity lacked the assurance that nationally administered funds were expended for the intended purpose (A/67/5/Add.13, chap. II, paras. 72-90). **The Advisory Committee concurs with the Board of Auditors' recommendations to improve project monitoring and oversight for field-level activities. It encourages entities to share best practices and lessons learned with respect to the effective management of decentralized organizational structures.**

58. The Board again pointed out that a long-standing dispute between UNDP and UNOPS regarding an $18 million inter-fund balance remained unresolved. The Board remained concerned about the adequacy of existing controls in recording and reporting such transactions and in taking timely action to correct discrepancies (A/67/5/Add.1, chap. II, para. 49). Upon enquiry, the Advisory Committee was informed that a panel of experts was being convened to settle the outstanding issues in this regard. In addition, the Board noted that during the biennium under review, there had been a difference of $49.01 million between the amounts initially recorded by UNDP and UNOPS, relating to incorrect adjusting entries on the management service arrangement between the two entities (A/67/5/Add.1, chap. II, para. 47). **The Advisory Committee concurs with the Board of Auditors' recommendation that the matter of the long-outstanding inter-fund balance be brought to a swift conclusion. The Committee points out that future problems could be minimized if adequate documentation is maintained by both entities as proof of services rendered.**

59. The Board of Auditors also noted that the framework for the harmonized approach to cash transfers, designed to harmonize cash transfers for nationally executed projects and reduce transaction costs, had not been taken up and applied consistently in the field. Specifically, it referred to the conclusions from the global

assessment by the Harmonized Approach to Cash Transfers Advisory Committee of the United Nations Development Group, which included observations that the initiative had not been implemented beyond the initial stages and that implementing countries were encountering challenges in establishing assurance and audit plans (A/67/5/Add.1, chap. II, para. 91). **The Advisory Committee believes that this important initiative appears to have no clear ownership across the United Nations funds and programmes. It concurs with the Board's findings and recommendations and notes that UNDP has agreed to take steps to reinforce the implementation in country offices of the framework for a harmonized approach to cash transfers.**

Procurement and contract management

60. The Board continued to make observations relating to the lack of compliance with entities' procurement rules. For example, in several cases across different entities, instances were noted of a high level of ex post facto procurement approvals, sole-source contracts and the invocation of operational exigencies for exceptional procurement actions. Specifically, the Board noted that UNRWA had granted 445 waivers with a combined value of $90.8 million to normal tender processes in awarding contracts, along with 24 ex post facto approval cases, during the biennium ended 31 December 2011 (A/67/5/Add.3, chap. II, paras. 84-94). UNOPS also showed an elevated number of procurement cases not solicited through formal competitive bidding processes, with a total value of $304.9 million over the biennium (A/67/5/Add.10, chap. II, para. 98 (b)). The Board noted in both cases that remedial actions were under way in the concerned entities. **While the Advisory Committee notes the volatility of the operating environments in the examples cited, it concurs with the Board's recommendations to strengthen internal controls and improve compliance with procurement procedures.**

Non-expendable property

61. As noted in the context of the Board's findings on the United Nations (see paras. 43 and 44 above), the Board reiterated its observations and recommendations on asset management, in particular with respect to non-expendable property. For example, in its visits to UNDP country offices, the Board continued to note weaknesses in asset management (A/67/5/Add.1, chap. II, paras. 116-124). Similarly, the Board recommended that UNFPA perform a complete verification of the asset register for assets held in the field, owing to a number of noted discrepancies (A/67/5/Add.7, chap. II, paras. 111-116). On the other hand, the Board did not retain its modified audit opinions for UNEP and UN-Habitat during the biennium under review, since sufficient evidence had been provided to support the adjustments made to asset values in the 2008-2009 biennium (A/67/5/Add.6, chap. II, paras. 87-88, and A/67/5/Add.8 and Corr.1, chap. II, para. 40). Similarly, the Board noted that UNRWA had completed its project to document and perform a valuation of its existing land and buildings, as part of its adoption of IPSAS (A/67/5/Add.3, chap. II, paras. 104-106). **The Advisory Committee remains concerned about the continued improper accounting for non-expendable property, which poses a reputational risk, in particular to funds and programmes, which are largely dependent on voluntary funding. The Committee refers to paragraph 44 above concerning the implications of IPSAS in this regard.**

Fraud and presumptive fraud

62. In the individual audit reports on the United Nations funds and programmes, the Board of Auditors disclosed the cases of fraud and presumptive fraud identified at each of the entities, in accordance with paragraph 6 (c) (i) of the annex to the Financial Regulations and Rules of the United Nations. Upon enquiry concerning one particular case, the Committee was informed by the responsible official from the relevant entity that efforts to recover monies had had to be abandoned, given the age of the case and the lack of progress on the part of national authorities. **The Advisory Committee recommends that every effort be made by United Nations entities to expedite investigations in cases of fraud or alleged fraud and, where wrongdoing is proved and staff concerned separate from organizations before investigations are completed, cases should be referred to national authorities without delay.**

Annex

Generally accepted audit committee principles and some identified good practices

	Accepted principles	*Some identified good practices*
Purpose	The audit committee, as an independent advisory expert body, should assist the governing body and the executive head of the entity, as appropriate, in fulfilling their oversight and governance responsibilities.	• The audit committee primarily assists the governing body and, as needed, the executive head of the entity, as an independent advisory expert body. • The audit committee helps to ensure that the governing body has independent and objective assurance on the effectiveness of the entity's controls, risk management, governance practices and accountability processes. • Oversight responsibilities include: (a) the integrity and appropriateness of financial and other reporting practices; (b) the effectiveness of internal controls, risk management, "tone at the top" and governance practices; (c) the performance of the internal audit/oversight function; (d) the process of monitoring compliance with laws and regulations, and integrity and ethics (e.g. code of conduct); and (e) the external auditors' qualifications and independence.
Authority	The audit committee should have the authority necessary to fulfil its responsibilities.	• The audit committee has free and unrestricted access to any information, staff, including internal auditors, and external auditors or any external parties necessary to fulfil its mandate and roles and responsibilities. • The head of internal audit/oversight and the external auditors have unrestricted and confidential access to the Chair of the audit committee.
Composition	The audit committee and its members should be independent and objective.	• The audit committee is composed entirely of independent external members of the entity. • The audit committee reports directly to the governing body. • The audit committee has no management powers or executive responsibilities. • All members of the audit committee are approved by the governing body.
	The size of the audit committee should be determined by the size of the governing body and of the United Nations entity.	• The audit committee comprises at least three members and, normally, not more than five. • The quorum for the committee is a majority of the members. • Members serve in a personal capacity; therefore, alternates are not allowed.

	Accepted principles	*Some identified good practices*
	Members of the audit committee should have collective skills, knowledge and experience to fulfil their responsibilities.	• Skills mix includes good management experience and understanding of finance, accounting, financial reporting in the public sector, United Nations entities or other multilateral institutions, internal controls and risk management, internal and external audits and governance and knowledge of the entity. • At least one member is a financial expert with good knowledge of generally accepted accounting principles and financial statements, internal controls and procedures for financial reporting. • Members of the audit committee are oriented and trained on the committee's objectives and responsibilities, internal and external audit functions, risk management and the functions/operations of the United Nations entity. • Members of the audit committee are free of any real or perceived conflict of interest.
Responsibilities		
Risk and controls	The audit committee should review — together with the internal and external auditors and management — and advise the governing body, at least annually, on the effectiveness of the entity's internal control systems, including its control assurance statements and risk management and governance practices.	• The audit committee reviews with management and the internal and external auditors the effectiveness of the entity's internal controls and any related significant findings and recommendations together with management's responses, including the timetable for implementing recommendations. • The audit committee reviews, at least annually, the entity's risk management process and risk profile. It reviews the entity's process for assessing significant risks or exposures and the steps that management has taken to manage and mitigate risks. • The audit committee reviews, through the results of internal and external audits, the entity's policies, systems and practices to ensure the appropriateness of internal controls over financial reporting, efficiency and effectiveness of operations, safeguarding of resources and compliance with laws, regulations and rules.
Financial statements	The audit committee should review and advise the governing body on the financial statements of the entity, including the external auditors' opinion on the financial statements, and management letters and other reports arising from the external audit of the entity's financial statements.	• The audit committee reviews and is familiar with the accounting and reporting principles, policies, standards and practices that the entity has applied in preparing its financial statements and other financial information reported by it. • The audit committee reviews the annual report of the entity and other significant accountability reports to ensure that, to the best of its knowledge, there are no material misstatements or omissions. • The audit committee reviews the reports from the external auditors.

	Accepted principles	*Some identified good practices*
Internal audit oversight	The audit committee should review and advise the governing body on the appropriateness of the level of independence of the internal audit/oversight function, the internal audit/oversight resources and staffing and the performance of the internal audit/oversight function.	• The audit committee conducts reviews of the performance of internal audit/oversight function, including a review of risk assessment processes, plans and budgets and an assessment of the appropriateness of oversight resources, and periodic external quality assessment. • All internal audit/oversight reports are made available to the audit committee for its consideration. • The audit committee reviews periodic activity reports on the results of the internal audit/oversight function. • The head of internal audit/oversight reports periodically to the audit committee on the implementation of management's action plans for implementing internal audit recommendations and on the effectiveness of the actions taken. The head of internal audit/oversight reports all areas where management has accepted a level of risk that is unacceptable to the entity. • The audit committee reviews the appropriateness of the internal audit/oversight charter. • The audit committee is consulted on the appointment, renewal and dismissal of the head of internal audit/oversight. • The audit committee reviews management's responsiveness to internal audit/oversight findings and recommendations.
External audit	The audit committee should review and advise the governing body on the scope and approach of the external auditors' planned examination and the reports therefrom.	• The audit committee ensures that the entity's management has appropriate mechanisms to support the external auditors in carrying out their work. • The audit committee considers the workplan of the external auditors. • The audit committee periodically meets with the external auditors and seeks their comments and advice on matters of risks, controls and governance. • The audit committee assesses the performance of external auditors and makes recommendations to the governing body. • The audit committee is consulted and provides advice on the appointment of the external auditor (including on the cost of the audit).

	Accepted principles	*Some identified good practices*
Reporting	The audit committee should report to the governing body on the committee's activities, issues, results and effectiveness in discharging its responsibilities.	• The audit committee prepares meeting reports, an annual report and special reports, if required, to the governing body and executive head. The annual report should confirm whether the committee has fulfilled all its responsibilities established in the charter and achieved its stated objectives for the period. • The reports of the audit committee are distributed to the external auditors and others, as deemed necessary, in accordance with the reporting structure of the entity. • The committee's annual report includes its assessment of the performance of the internal audit/oversight function (such as actual achievements against workplans) and external audit and its recommendations, if necessary, for the improvement of risk management, controls and governance processes. • The audit committee reviews its own performance at least annually.
	The audit committee should maintain and promote effective communication with the governing body (or other governing and legislative authority), management, the head of internal audit/oversight and the external auditors.	• Management has a good understanding of the audit committee's purpose and responsibilities.
Values and ethics (compliance)	The audit committee should review, at least annually, the systems established by the entity to maintain and promote international civil service values and to ensure compliance with laws, regulations, policies and high standards of integrity and ethical conduct to prevent conflicts of interest, misconduct and fraud.	• The audit committee obtains regular updates regarding any litigation, including assessments of related contingent liabilities, investigations, fraud and ex gratia and special payments. • The audit committee reviews the appropriateness and adequacy of anti-fraud policies, whistle-blowing arrangements and ethics provisions. • The audit committee reviews the appropriateness of the system in place to receive, investigate and take action on allegations of fraud and misconduct.

	Accepted principles	*Some identified good practices*
Operations (functioning)	The audit committee should be established by a charter or terms of reference approved by the governing body.	• United Nations entities are generally governed by a legislative body, governing body, council or commission. In circumstances in which United Nations entities are managed by a chief executive or other governance structures, the audit committee is established but modified to fit the specific organizational structure. • The audit committee is accountable to the governing body. • A charter establishes the independence, objectivity, authority, responsibilities, functioning and structure of the audit committee. Reporting of the audit committee is established in the charter. • The authority, responsibilities and structure of the audit committee, established under the charter, are set out in the governing law of the United Nations entity. • The audit committee annually reviews the appropriateness of the charter and requests the governing body to approve proposed changes.
	The audit committee should establish an annual plan to ensure that its responsibilities and stated objectives for the period will be effectively addressed.	• The audit committee's annual plan is submitted to the governing body.
	The audit committee should meet as necessary to fulfil its responsibilities.	• The audit committee meets three to four times a year or more, as necessary. • Meeting agendas are prepared and provided in advance to members. The meetings are scheduled at least 12 months in advance, with sufficient time to report to the governing and/or legislative body. • Minutes or reports of meetings are documented and approved. • The audit committee establishes a set of working procedures to assist it in carrying out its responsibilities.
	The audit committee should have adequate resources in order to fulfil their responsibilities.	• The audit committee is assisted as necessary by a secretariat. • If necessary, the audit committee has the ability to obtain independent counsel or other experts to advise it. • All confidential documents and information submitted to or obtained by the audit committee remain confidential.

	Accepted principles	*Some identified good practices*
Operations (functioning)	Standards for tenure, terms and conditions of service, conflict of interest, discipline, liability indemnification, security clearance, travel authorization and remuneration, and mechanisms to address disagreements should be established.	• These standards are preferably included in the audit committee's charter. They are closely in line with the systems that prevail in the entity itself. • Payment of travel costs, daily allowances and other out-of-pocket expenses to members of the audit committee are considered. • The members of the audit committee are appointed and serve for at least three years and may be reappointed for a second and final term of two to three years. To ensure continuity at the start-up phase of the audit committee, initial terms may be less than three years so that appointments can be staggered over a period of time. • The members of the audit committee are required to complete the entity's own financial and conflicts of interest declaration and disclosure processes. • Former managerial staff of the entity are not appointed as committee members for five years following separation from the entity. Audit committee members are not appointed in the entity for a period of five years following the expiry or discontinuation of their term of appointment. • Decisions of the audit committee are by consensus. If consensus does not prevail, dissenting reports are appropriate.